

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

October 16, 2013

City Council Chambers

MEMBERS PRESENT: Leanne Cardoso, Bernie Bossio, Tom Shamberger, George Papandreas, and Jim Shaffer

MEMBERS ABSENT: None.

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:

A. Minutes for the September 18, 2013 Hearing. Papandreas moved to approve as presented; seconded by Shamberger. Motion carried unanimously.

III. OLD BUSINESS: NONE

IV. NEW BUSINESS:

A. V13-36, V13-49 thru V13-52 / Sunnyside Properties, LLC / 300 Carson Street: Request by William Morlino, on behalf of Sunnyside Properties, LLC, for variance relief from Article 1339.04 as it relates to setbacks at 300 Carson Street; Tax Map 20, Parcel 148; B-2, Service Business District. **TABLED**

Shamberger moved to remove V13-36, V13-49, V13-50, V13-51 and V13-52 from the table; seconded by Papandreas. Motion carried unanimously.

Fletcher read the combined Staff Report stating that on 16 JUL 2008, the petitioner obtained variance approval under Case No. V08-32 to develop a surface parking lot on the subject site where two public rights-of-way intersect and conditional use approval under Case No. CU08-11 to establish a "Commercial Parking Lot" use in the R-3 District.

On 01 MAY 2012, City Council enacted a Zoning Map Amendment under Case No. RZ12-01 reclassifying the subject realty from R-3, Multi-Family Residential District to B-2, Service Business District. Addendum A of this report illustrates the location of the subject site.

It should be noted that the subject 40' x 40', 1,600 square foot tract of realty is considered a nonconforming parcel as it does not comply with minimum lot area (6,000), minimum lot frontage (60 feet), or minimum lot depth (100 feet) standards for the B-2 District. The parcel's front is along Carson Street.

On 18 SEP 2013, the petitioner appeared before the Board seeking conditional use approval for Case No. CU13-15 to construct a garage/storage structure on Parcel 148. The proposed development program utilized the existing foundation walls of a former nonconforming structure that was razed and removed several years ago. The proposed structure is 30 feet X 27.75 feet or 832.5 square feet in area. The Board denied the petitioner's conditional use request and tabled the five (5) related variance petitions (see Exhibit 1 – Notification of Decision).

Staff met with the petitioner on 19 SEP 2013 to discuss alternate development programs given uses permitted in the B-2 District. Based on this discussion, Staff understood that the petitioner's intent was to relocate his property leasing and management office at 2109 University Avenue to the proposed structure at the corner of Carson Street and Grant Avenue. The proposed building would also provide a small workshop space customarily associated with property management and for minor woodworking.

On 20 SEP 2013, the petitioner advised Staff verbally that he wanted to change the proposed use from a garage storage building to an "Artist Studio" use and maintain the proposed building design as presented to the Board on 18 SEP 2013.

Article 1329.02 provides the following land use definitions.

"ARTIST STUDIO – Workspace for artists or artisans, including individuals practicing one or more of the fine arts or skilled in crafts."

"ADMINISTRATIVE OFFICE – An office establishment primarily engaged in overall management and general supervisory functions, such as executive, personnel, finance, legal and sales activities, performed in a single location or building for other branches or divisions of the same company."

Table 1331.05.01 provides that "Artist Studio" uses are permitted in the B-2 District with conditional use approval and "Administrative Office" uses are permitted in the B-2 District by-right.

Based on Staff's understanding of the petitioner's use intentions, it is the opinion of the Planning Division that the most appropriate use classification for the revised development program is an "Administrative Office."

The following narrative describes each of the variance cases presented herein.

Agenda Item A..... Case No. V13-36

The following table identifies related lot coverage and setback requirements for the proposed structure and notes requisite variances in bold font highlighted in yellow. [See Staff report for table and illustrations]

As the table above illustrates, variance relief of 16.75 feet from the minimum side (east) setback standard and 18 feet from the minimum rear setback standard is required for the development as proposed.

It should be noted that said minimum building envelope standards result in a by-right buildable area of only 15' X 15' for the subject 40' x 40' parcel.

Agenda Item B..... Case No. V13-49

Article 1361.03(P)(1) provides that the first two (2) floors of a building must be constructed of natural materials including stone, brick, and wood siding, but not including materials such as, or similar to, wood roof shingles, reflective glass, split-faced concrete block, imitation stone, and imitation stucco or Drivit.

Because the proposed development program includes the use of split-faced concrete block, variance relief is required. It should be noted the petitioner has stated that wood siding will be used rather than the reference to brick illustrated on the submitted renderings.

Agenda Item C Case No. V13-50

Article 1361.03(E) provides that building facades adjacent to public streets must have at least 60% ground floor transparency. Because no windows are provided in the proposed development along Carson Street or Grant Avenue, variance relief is required.

Agenda Item D Case No. V13-51

Article 1347.06 and Table 1365.04.01 provides the following minimum parking requirement for “Administrative Office” uses:

3 spaces per 1,000 sq. ft. of net floor area up to 20,000 sq. ft. plus 2 spaces per 1,000. sq. ft. of net floor area greater than 20,000 sq. ft.

The minimum parking requirement is calculated as follows:

$$\frac{832.5 \text{ sq. ft.}}{1,000 \text{ sq. ft.}} \times 3 = 2.4 \text{ spaces or } \mathbf{2 \text{ spaces}}$$

The petitioner has revised the interior design of the proposed building to include one internal garage parking space. Because there is no remaining site space for exterior surface parking, variance relief of one (1) parking space is required.

It should be noted that although Article 1361.03(Q)(2) permits on-street parking spaces immediately adjacent to a land use to count towards fulfilling minimum parking requirements, the subject’s frontage along Carson Street and Grant Avenue is striped yellow and on-street parking is not permitted.

Agenda Item E Case No. V13-52

Article 1361.03(O)(5) provides a minimum building height of two (2) stories along secondary streets in the Sunnyside Overlay Districts. Because the proposed building height is one (1) story, variance relief is required.

It should be noted that the matter of one-story and two-story development scenarios was discussed by the Board during its 18 SEP 2013 hearing for Case No. CU13-15. Staff reminds the Board that the subject site is a 40’ x 40’, 1,600 square foot tract of realty, which is only 27% of the minimum lot area standard for the B-2 District. Additionally, increasing the intensity of development on the subject site will only increase the extent of requisite variance relief in terms of minimum parking, building envelope encroachments, etc.

Fletcher stated that Staff recommends that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for the five (5) variance petitions presented herein. However, each respective variance petition must be considered and acted upon by the Board separately.

Bossio recognized the petitioner Bill Morlino of 2045 University Avenue, who stated that he was motivated to build on the property as he has had two couches burned and is constantly picking up trash on the property on football weekends.

Bossio asked if he was an adjoining property owner. Morlino explained the University owns on one side of his parking lot and he owns the property behind them. Bossio asked if his property adjoins the University property and Morlino confirmed and stated he owns five lots in the area.

Bossio asked if his property adjoins the University's along the back property line. Morlino confirmed and stated he owned the property from Carson Street to the corner.

Bossio asked how the lot became a 40' x 40' lot. Morlino stated he would have to research back to the 1900's and that he has no idea how the lot was determined. Bossio clarified that the lot was not something that he had subdivided previously and Morlino confirmed. Morlino explained that a house had previously occupied the lot since the early 1900's and was razed between four to five years ago.

Morlino explained the first two blocks of Sunnyside are at a disadvantage as they are non-standard lots.

There being no further comments or questions by the Board, Bossio asked all in attendance if there were any objections in combining the five variance requests together. There being no objections, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the respective "Findings of Fact" submitted by the applicant. Addendum B of this report provides Staff recommended findings of fact. Again, each respective variance petition must be considered and acted upon by the Board separately.

Fletcher stated that Staff recommends that the following conditions be included in the approvals for each petition.

Agenda Item A

Case No. V13-36 Variance relief as it relates to setbacks.

Fletcher stated that no conditions are recommended by Staff.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V13-36 as revised by Staff; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The proposed development will use the existing foundation of a formally razed and removed nonconforming residential structure.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Developing the subject 40' x 40' lot, given minimum setback requirements, could not be built upon.

Finding of Fact No. 3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Allowing the setback encroachment will permit the development of a small parcel that is currently vacant, underutilized, and otherwise considered a noncontributing small tract of land.

Finding of Fact No. 4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The proposed building and use should serve to improve a nonconforming parcel that is currently vacant, underutilized, and otherwise a noncontributing small tract of land. The nature of the variance cannot contribute to or diminish existing traffic congestion within the immediate area.

Shamberger moved to approve V13-36 as requested; seconded by Papandreas. Motion carried unanimously.

Agenda Item B

Case No. V13-49 Variance relief as it relates to design and performance standards.

Fletcher stated that to see the spirit and intent of the Sunnyside Overlay Districts' design and performance standards relative to building materials are observed and substantial justice done, Staff recommends the following conditions:

1. That wood siding, if used, shall be horizontally articulated clapboard, lap, or similar design and not a vertically articulated design often resembled in board-and-batten or T-111 type siding.
2. That wood siding, if used, shall be treated, painted, and/or stained for resistance to outdoor, severe weather.
3. That the color of the split-faced block shall be comparable and complementary to the color (e.g., limestone color, sandstone color, etc.) of the existing cut foundation stone located on the subject site and proposed for use as a portion of the subject building's foundation. The color of the split-faced block may not be concrete grey, white, red or a similar contrasting color.

4. That cement fiberboard siding replicating horizontally articulated wood clapboard, lap, or similarly designed siding may be used; provided, it is comprised of a simulated wood grain profile.

Shamberger made a motion to find in the affirmative for all the Findings of Facts for V13-49 as revised by Staff; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

With the exception of cost-prohibitive cut natural stone, split faced block will match the existing stone walls better than other materials.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Similar variances have been granted in the Sunnyside Overlay Districts.

Finding of Fact No. 3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The use of split-faced type block should not adversely impact the built environment within the immediate area as similar appearing hardscape materials were used to create a retaining wall surrounding the bus stop developed under the Sunnyside Up Grant Avenue streetscape project at the nearby corner of Grant Avenue and First Street.

Finding of Fact No. 4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

Conditions required by the Board should see that the spirit and intent of the Sunnyside Overlay Districts' design and performance standards relative to building materials are observed and substantial justice done thereby mitigating adverse impacts to the immediate built environment. The nature of the variance cannot contribute to or diminish existing traffic congestion within the immediate area.

Papandreas moved to approve V13-49 with Staff recommended conditions; seconded by Cardoso. Motion carried unanimously.

Agenda Item C

Case No. V13-50 Variance relief as it relates to transparency.

Fletcher stated to see that the spirit and intent of the Sunnyside Overlay Districts' design and performance standards relative to fenestration are observed and substantial justice done, Staff recommends the following condition:

1. That, to soften the otherwise plain wall of the proposed building that will face Grant Avenue given the absence of windows as required, landscaping of arborvitae, upright yew, or similarly appropriate vertically growing evergreen shrubs must be planted as generally illustrated in the following graphic. [see Staff report for related illustrations]

Papandreas noted he did not see a great deal of difference between the building plan that was not approved under the conditional use petition last month and the current request. The building will look like a garage no matter what the use is labeled and suggested a window to keep the structure within the spirit of the neighborhood.

Cardoso agreed with the idea of having a window in the structure.

Bossio agreed and noted it refers back to what was discussed at the previous hearing and the structure still looks like a garage. Therefore the transparency, fenestration and landscaping does not change from what they reviewed at the last hearing.

Cardoso stated that even garages have windows.

Bossio asked for both the side and rear elevation. Fletcher referred to the Staff Report and stated that the right side of the plan is parallel with the WVU Life Sciences building. Bossio asked if the pedestrian door was on the right side elevation and not to the front, which would be the norm. Fletcher confirmed.

Bossio noted when looking at what the Overlay District provides for fenestration, the structure does not have the intended appearance.

Fletcher referred to the Staff report and noted the façade that would face Grant Avenue. Bossio asked Fletcher what the front would be considered. Fletcher stated the previous structure was addressed to Carson Street. Bossio asked if that would be the left side elevation and Fletcher confirmed.

Shamberger referred to Finding of Fact 2 and stated when saying no windows at all and this is a little different than determining setbacks because of the size of lot.

Both Bossio and Cardoso agreed that the structure needed windows.

Shamberger referred to Finding of Fact 2 and stated that windows would be appropriate. Bossio noted the B-2 District is a commercial and office type setting.

Papandreas asked Fletcher if the case should be viewed as an “administrative office” or an “artist studio” as the applicant relates to one type of use and the Staff report leans towards the other. Fletcher stated the Staff Report related to the “administrative office” as the “artist studio” use would require a conditional use approval.

Papandreas expressed that there are no changes in how the case was presented from last month and the area property owners are trying to improve the neighborhood. A garage looking building may have a negative effect on the surrounding properties.

Fletcher suggested that if the Board wishes to see some level of fenestration that it could, when reviewing the Findings of Facts, consider granting some variance relief but not the requested relief of providing no fenestration.

Bossio noted the lot is a 40' x 40' and suggested the Board work with the petitioner on what is proper, but the work has to go both ways and it is desired for the structure to meet the character of the surrounding properties in the B-2 District and the standard. Bossio suggested a business

glass door be added to the structure with lighting as it would help with locating the entrance. Bossio referred to other business entrances when giving an example of a glass door in a business type setting. Cardoso agreed with the idea of a business glass door.

Fletcher noted the proposed entrance would be on the right side of the garage door and asked Mr. Morlino if that was correct. Morlino confirmed.

Bossio referred to the Staff Report and suggested a glass door be added where bushes are shown in the illustration.

Bossio asked for dimensions of the garage door. Morlino stated the garage door is 9 feet and to the left of the garage door is 5 feet and to the right of the garage door is 14 feet. Bossio suggested, in the Grant Avenue facing façade, installing a three (3) foot entrance door and take out two (2) feet from the garage over and two (2) feet from the corner over and fill the rest with glass.

Bossio asked if the land was at a downward slope on the right side of the garage door. Morlino stated the land was level and explained the only slope is from the concrete slab to the street.

Bossio noted a standard height door could be installed and the glass would have to be 17.5 inches off the floor and meet the height of the door. Bossio drew an illustration to explain to the Board and the petitioner what he was suggesting.

Based on the Bossio's illustration and the Board's related discussion, Fletcher offered an alternate recommended condition that addresses the issue of requiring glass on the Grant Avenue facing façade, "That a standard glass pedestrian door at least 6' 8" tall by 3' wide and a bank of glazing at least 7' wide by 4' 8" tall be developed in the façade facing Grant Avenue to the right of the garage door shown on the petitioner's elevation drawings. Additionally, glass block type materials may not be used to fulfill this condition."

The Board decided to review and consider each finding of fact individually with Bossio reading the question and Fletcher reading Staff's recommended response for each of the findings of fact.

Bossio: Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Fletcher stated that based on the Board's discussion concerning their interest in requiring glass, Staff recommends an alternate finding of fact from that presented in the Staff Report, "Given the petitioner's interest in and obligation to provide on-site parking on the 40' X 40' parcel by way of garage and related garage door along with site security and privacy conveniences, variance relief appears prudent as conditioned by the Board."

Shamberger made a motion to find in the positive for the alternate Finding of Fact No. 1 stated by Fletcher; seconded by Papandreas. Motion passed unanimously.

Bossio: Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Fletcher: Although variance relief to the minimum window/fenestration standards in the Sunnyside Overlay Districts has been approved by the Board, the circumstances of the site in terms of topography and use of existing foundation walls along with the proposed use and proposed structure appears unique warranting relief as requested.

Papandreas made a motion to find in the positive for Finding of Fact No. 2 as revised in the Staff Report; seconded by Shamberger. Motion passed unanimously.

Bossio: Finding of Fact No. 3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Fletcher: The nature of the variance, given the proposed use and proposed structure, should not adversely impact the neighboring built environment.

Shamberger made a motion to find in the positive for Finding of Fact No. 3 as revised in Staff report; seconded by Papandreas. Motion passed unanimously.

Bossio: Finding of Fact No. 4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

Fletcher stated that, based on the Board's discussion concerning their interest in requiring glass, Staff recommends an alternate finding of fact from that presented in the Staff Report, "Conditions required by the Board should see that the spirit and intent of the Sunnyside Overlay Districts' design and performance standards are observed and substantial justice done thereby mitigating adverse impacts to the immediate built environment by requiring glazing as conditioned by the Board. The nature of the variance cannot contribute to or diminish existing traffic congestion within the immediate area."

Papandreas made a motion to find in the positive for the alternate Finding of Fact No. 4 as stated by Fletcher; seconded by Cardoso. The motion passed unanimously.

Papandreas moved to grant variance relief under Case No. V13-50 with the condition that a standard glass pedestrian door at least 6' by 8" tall by 3' wide and a bank of glazing at least 7' wide by 4' 8" tall be developed in the façade facing Grant Avenue to the right of the garage door shown on the petitioner's elevation drawings. Additionally, glass block type materials may not be used to fulfill this condition. The motion was seconded by Shamberger; motion carried unanimously.

Agenda Item D

Case No. V13-51 Variance relief as it relates to minimum parking requirements.

Fletcher stated that no conditions are recommended by Staff.

The Board decided to review and consider each finding of fact individually with Bossio reading the question and Fletcher reading Staff's recommended response for each of the findings of fact.

Bossio: Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Fletcher stated that, based on the Board's discussion, Staff recommends an alternate finding of fact from that presented in the Staff Report, "The subject property is 40' X 40' where any development of the site would create challenges in meeting minimum on-site parking requirements."

Shamberger made a motion to find in the positive for the alternate Finding of Fact No. 1 as stated by Fletcher; seconded by Papandreas. Motion passed unanimously.

Bossio: Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Fletcher: Developing the subject 40' x40' lot, given minimum parking requirements, does not appear otherwise likely.

Shamberger made a motion to find in the positive for Finding of Fact No. 2 as revised in the Staff Report; seconded by Papandreas. Motion passed unanimously.

Bossio asked how many feet are between the street and the garage door. Morlino answered with five feet three inches. Bossio suggested a garage door opener be installed to eliminate a stop prior to pulling into garage.

Bossio: Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Fletcher stated that, based on the Board's discussion, Staff recommends an alternate finding of fact from that presented in the Staff Report, "Visitor frequency to the proposed use is not anticipated to the extent that granting variance relief of one parking will cause harm to adjoining properties or public improvements."

Cardoso made a motion to find in the positive for the alternate Finding of Fact No. 3 as stated by Fletcher; seconded by Shamberger. Motion passed unanimously.

Bossio: Finding of Fact No. 4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

Fletcher stated that, based on the Board's discussion, Staff recommends an alternate finding of fact from that presented in the Staff Report, "The proposed building and use should serve to improve a nonconforming parcel that is currently vacant, underutilized, and otherwise a noncontributing small tract of land."

Shamberger made a motion to find in the positive for Finding of Fact No. 4 as revised by Staff; seconded by Papandreas. The motion passed unanimously.

Cardoso moved to approve V13-51 by granting a one (1) parking space variance as requested; seconded by Shamberger. Motion carried unanimously.

Agenda Item E

Case No. V13-52 Variance relief as it relates to minimum building height.

Fletcher stated that no conditions are recommended.

The Board decided to review and consider each finding of fact individually with Bossio reading the question and Fletcher reading Staff's recommended response for each of the findings of fact.

Bossio: Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Fletcher: Facility is to be used for administrative office activities customarily associated with property leasing and management and incidental woodworking. Any additional height would be wasted space and expense. Increasing development intensity of the 40' x 40' parcel will only increase the extent of requisite variance relief in terms of minimum parking, building envelope encroachments, etc.

Papandreas made a motion to find in the positive for Finding of Fact No. 1 as revised in the Staff Report; seconded by Shamberger. Motion passed unanimously.

Bossio: Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Fletcher: Structure could not be built otherwise. Developing the subject 40' x 40' lot, given minimum parking and other related development intensity requirements, does not appear otherwise likely.

Papandreas made a motion to find in the positive for Finding of Fact No. 2 as revised in the Staff Report; seconded by Shamberger. Motion passed unanimously.

Bossio: Finding of Fact No. 3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Fletcher: The nature of the variance, given the proposed use, the proposed structure, and the 40' x 40' parcel, should not adversely impact the immediate built environment of private and WVU parking lots.

Papandreas made a motion to find in the positive for Finding of Fact No. 3 as revised in the Staff Report; seconded by Shamberger. Motion passed unanimously.

Bossio: Finding of Fact No. 4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

Fletcher: The proposed building and use should serve to improve a nonconforming parcel that is currently vacant, underutilized, and otherwise a noncontributing small tract of land surrounded by private and WVU parking lots. The nature of the variance cannot contribute to or diminish existing traffic congestion within the immediate area.

Shamberger made a motion to find in the positive for Finding of Fact No. 4 as revised in the Staff Report; seconded by Cardoso. Motion passed unanimously.

Cardoso moved to approve V13-51 as requested; seconded by Shamberger. Motion carried unanimously.

Bossio reminded Mr. Morlino that the Board's decisions can be appealed to Circuit Court within thirty days of the Board's decisions and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

- F. V13-37 / GCF Properties, LLC / 246 and 248 Fife Street:** Request by Lisa Mardis of Project Management Services, on behalf of GCF Properties, LLC, for variance relief from Article 1339.04 as it relates to maximum front setbacks at 246 and 248 Fife Street; Tax Map 26, Parcels 156 and 157; R-3, Multi-Family Residential District.

Shamberger stated he had previous business with Sigma Ki House Corporation on High Street which is the property located directly across from the petitioner's requested location. He noted that a conflict of interest does not exist but that he wanted to disclose the past relationship.

There being no objections to Shamberger's participation, Fletcher read the combined Staff Report stating the petitioner seeks to raze two structures and construct one "Multi-Family Dwelling" structure at 246 and 248 Fife Street. Addendum A of this report illustrates the location of the subject development site.

The following summary details the proposed development program.

- Ten (10) one-bedroom units and one (1) two-bedroom unit for a total of 12 occupants.
- Twelve on-site parking spaces with 10 spaces having direct access onto Fife Street and two spaces along the side of the proposed structure. It should be noted that the parking layout must be adjusted to provide 2.5 additional feet to the accessible parking space and that the accessible space be designed as either a van or universal accessible space.

Agenda Items F and G V13-37 and V13-38

The following table identifies R-3 District setback requirements set forth in Article 1339.04, the petitioner's corresponding proposed setbacks, and required variances. [see staff report for related table]

Agenda Item H V13-48

Article 1365.09(B)(2) provides a maximum width of twenty-two (22) feet for private driveway entrances (curb cuts) at the right-of-way line of the street. Additionally, driveways may be not located closer than 30 feet of the nearest point of the intersection of two streets.

The proposed width of the curb cut is approximately 104.5 feet, which requires an 82.5 foot variance.

The proposed location of the curb cut abuts a very narrow, dead-end public right-of-way that appears to have been used to access a parking area behind Parcel 155 of Tax Map 26 by the Phi Sig Fraternity at 672 North High Street (see illustration below). The abutting alley does not appear to have been improved or accepted by the City for maintenance purposes. The proposed location of the driveway entrance requires variance relief [see staff report for related illustrations].

Staff recommends that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for the three (3) variance petitions presented herein. However, each respective variance petition must be considered and acted upon by the Board separately.

Bossio recognized the petitioner's representative, Lisa Mardis of Project Management Services, who stated the variances requested are for an eleven unit apartment building. The two existing structures, which appear to be out of character with the building, will be razed. The three variances requested are interrelated and each relies on the other. Due to the Morgantown Utility Board infrastructure, storm water facilities cannot be placed to the rear of the property. Therefore, parking has to be located in the front from Fife Street causing the need to exceed the minimum curb cut requirement similar to other locations throughout the City. As part of the design, a shed style roof was created that directs rain water toward Fife Street. The proposed front setback appears to be more fitting with the adjacent TKE house and other surrounding fraternity and sorority houses. At the Technical Review Meeting, Tom Arnold stated the removal of a couple parking meters should not be a problem. In addition, the City Engineer stated there are no concerns with the curb cut.

There being no comments or questions by the Board, Bossio asked if anyone present objected to combining the three variance requests together. There being no objections, Bossio opened the public hearing asking if anyone was present to speak in favor of the requests. There being none, Bossio asked if anyone was present to speak in opposition of the requests.

Bossio recognized Amanda Ray on behalf of Richwood Properties, 374 Forest Avenue, who stated that Richwood Properties owns the property at 254 Fife Street. Ray stated Richwood hadn't received any notifications of projects related to the variance petitions and in August someone had entered in through their property and removed grass, dropped gravel and omitted two of their parking spaces that had been rented out previously. Richwood Properties followed up on the issue and were notified of the access alley-way at that location. Bossio informed Ray that the BZA was not discussing the alley way and it had nothing to do with the proposed variances. Bossio asked Ray if they received noticed for the proposed variances and Ray confirmed stating that it is her understanding the project would encroach on the borders that would affect the alley-way, curb and the driveway.

Shamberger asked for clarity on how the project would encroach on the alley-way.

Ray distributed pictures to the Board to show how the project would encroach the borders of the property.

Cardoso asked Ray if she was saying the project would be built on their property. Ray explained the building would not be built on their property, but how the property is accessed with parking would affect their property.

Bossio asked Ray if she was stating people were accessing her legal property. Ray presented a survey to the Board to further explain how the project would encroach onto her property by allowing access with parking.

Cardoso asked if Richwood Properties had been maintaining the alley-way prior to the tree removal and Ray confirmed.

Bossio asked Fletcher for clarification on the location of the alley-way. Fletcher referred to the Staff report and explained the location of the alley-way, stating it is his understanding the right-of-way had never been annulled by the City and is unopened and unapproved right-of-way. The house managed by Richwood Properties encroaches into the right-of-way and the site plan shows ten feet has been reserved on the petitioner's proposed site plan to access the parking area behind the fraternity that fronts High Street. The fraternity obtained a permit to improve the right-of-way and more work was done than what the permit allowed. The City Administration has since met with a representative of the fraternity as well as the petitioner to gain a better understanding on the work completed. Fletcher noted the petitioner's property and access to the rear of that property have nothing to do as illustrated on the site plan with needing to use the paper right-of-way. However, the paper right-of-way has been improved by the fraternity.

Bossio reiterated to Ray that the alley-way issues have nothing to do with the current variance petitions before the Board.

Bossio recognized James Giuliani of 256 Prairie Avenue, who stated there is confusion with what's going on with the lots and the project does compromise the property rights of the future owner by allowing access to the 8 foot right-of-way. He believes the construction to the alley-way was done illegally as had requested to review the building permits but was not notified and wonders if things were done on false pretenses. Giuliani asked what is being used for the driveway and was the subdivision ever completed as the property was never landlocked until the subdivision took place.

Bossio recognized Matthew Ray of 435 Summer Street and is the property manager for Richwood Properties. Ray referred to the pictures distributed by Amanda Ray and noted the Staff report claims the project has two parking spaces however the pictures show that four parking spaces were given which would not be parallel parking but would be pull-in parking. In addition, if someone were to parallel park, they would encroach onto his property by the way the vehicle is maneuvered.

Bossio invited Mardis to the podium for a five-minute rebuttal. Mardis reiterated that the 8 foot alley has never been annulled and the two parking spaces in question on the Richwood Properties site are located on public right-of-way in which parking is not allowed. Therefore, a building permit was obtained and the alley-way was opened and the contractors worked outside of the perimeters, in which Mr. Sheppard was not involved. Blacktop was spread over that area and a building permit was required because extra asphalt was spread onto Mr. Shepard's property. When a meeting was held, the City suggested that a piece of property could be dedicated to the City at the corner where the house encroaches into the City right-of-way. Mr. Shepard has not decided whether the property will be dedicated or a prescription easement be

developed to the back parking lot. Mardis reiterated that Mr. Shepard was not associated nor involved with the paving of the properties.

Bossio asked if the two parking spaces in question are privately owned by Richwood Properties. Mardis stated the two parking spaces are not privately owned and are in the public right-of-way.

Bossio asked if the prescriptive easement would be made legal. Mardis explained it will be made legal whether a prescriptive easement is obtained or a dedication to the City. Mardis referred all questions regarding the prescriptive easement to Mr. Shepard.

Bossio recognized Doug Shepard of 6 Stewart Place, who reiterated that the strip is located on three parcels and the variance petitions are not on the current strip being discussed. Shepard felt the discussions taking place have no relevance with the requested variance petitions. The easement has been utilized for many years. He had a survey conducted and found the corner of the house in question sits in the alley and is in public right-of-way. Shepard reiterated he is not asking for anything on the strip and the two parcels related on the petitions are 246 and 248 Fife Street.

There being no further comments or questions by the Board, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new matter underlined).

Again, each respective variance petition must be considered and acted upon by the Board separately.

Staff recommends that the petitioner's variance requests be approved with the following conditions for each respective petition:

Agenda Item F

Case No. V13-37 Maximum Front Setbacks

Fletcher stated that Staff recommends approval without conditions.

Cardoso asked Fletcher to clarify if the parcels in question are related to the oppositions by the Rays and Mr. Giuliani. Fletcher referred to the Staff Report and explained that 246 and 248 Fife Street are two separate parcels. The parcel that is identified as 248 Fife Street abuts the right-of-way which then abuts the Rays' property.

Cardoso noted that only two parcels were shown within the Staff Report and asked for clarification on the parcel in opposition.

Bossio invited Mr. Shepard up to the podium to provide clarification on the parcel in question.

Shepard explained there are three tax tickets which include 246 and 248 Fife Street and then a strip. He noted the map in the Staff Report is incorrect as it does not include the strip portion.

Shepard referred to a picture in the Staff Report and explained how the retaining wall is the property line for 246 and 248 Fife Street, which is the two parcels involved with the variance petitions.

Fletcher referred to the Staff Report and noted the petitioner provided a tax map of the property, which displays only two parcels and asked Sheppard if there are three parcels associated with the project. Shepard stated only two parcels are involved with the project. However, the project involves three tax tickets which include the two parcels and the strip of land in question.

Fletcher noted that the only issues currently before the Board are the setbacks and curb cut.

Cardoso asked what happens at a later date if the properties are proved to be wrong and it ends up in court and would it have any impact on where the structure is located on that lot. Fletcher referred to the site plan and explained there are 21 foot perimeters. Shepard noted that 10 foot strips were built into the plan for parking accesses and the strip is not relevant in the project.

Shamberger made a motion to find in the affirmative for all the Findings of Facts for V13-37 as revised in the Staff Report; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Based on consultation with the Morgantown Utility Board, the development of stormwater management facilities at the rear of the property is physically not possible given the location of existing infrastructure. This challenge necessitated parking to be developed to the front of the property rather than the rear and a shed roof design directing rain water towards Fife Street, resulting in a proposed setback that exceeds the maximum related front setback standard.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Although the current structures have non-conforming front setbacks that encroach into the minimum front set back requirement, the proposed structure is located further back more than twenty (20) feet. It appears that other structures have similar non-conforming front setbacks that were built under the previous zoning code in which there was not a maximum front set back requirement. The fraternity house located across Fife Street appears to setback further than twenty (20) feet from the property line. The adjacent TKE House, although fronting on High Street, has definite presence on Fife Street due to their parking area. Therefore, the proposed front setback will not be out of character will the built environment.

Finding of Fact No. 3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The redevelopment of this parcel will result in the removal of two structures with nonconforming front setbacks which appears at one point to encroach into the City's right-of-way. A front side setback variance will keep with the established building line of adjacent properties, in particular the side of the TKE house, and will not harm this property or vicinity improvements. No significant grading will be necessary that would harm the adjoining property, public rights-of-way, or existing utilities. The variance should not affect emergency or service vehicle access to adjacent properties.

Finding of Fact No. 4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The redevelopment should enhance the value of the area and accordingly contribute to the market value of neighboring structures. Granting this variance cannot improve nor mitigate traffic congestion that is already present within the neighborhood. Likewise, the approval of this variance would have no impact on the land-use characteristics of the vicinity or zoning district.

Shamberger moved to approve V13-37 as requested; seconded by Papandreas. Motion carried unanimously.

Agenda Item G

Case No. V13-38 Minimum Rear Setbacks

Fletcher stated that Staff recommends approval without conditions.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V13-38 as revised in the Staff Report; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Based on consultation with the Morgantown Utility Board, the development of stormwater management facilities at the rear of the property is physically not possible given the location of existing infrastructure. This challenge necessitated parking to be developed to the front of the property rather than the rear and a shed roof design directing rain water towards Fife Street, resulting in a proposed setback that encroaches into the related minimum rear setback standard.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Located in a medium to high density area with an array of parcel configurations, it is sometimes difficult to adequately tell one property boundary from the next. It appears that there are an abundance of structures that do not meet the required rear setback set forth in the zoning code, especially on smaller parcels with a high degree of lot coverage. The applicant seeks to abide by the intent of the ordinance by providing both adequate sidewalk and green space around the structure.

Finding of Fact No. 3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The redevelopment of this parcel will result in the removal of two structures with nonconforming front setbacks which appears at one point to encroach into the City's right-of-way. A front side setback variance will keep with the established building line of adjacent properties, in particular the side of the TKE house, and will not harm this property or vicinity improvements. No significant grading will be necessary that would harm the adjoining property, public rights-of-way, or existing utilities. The variance should not affect emergency or service vehicle access to adjacent properties.

Finding of Fact No. 4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The proposed development should enhance the market value of adjacent properties while maintaining the residential aspect of the vicinity. Granting this variance will in no way diminish or increase congestion on public streets, but incorporate a design that is fitting with the area.

Shamberger moved to approve V13-38 as requested; seconded by Papandreas. Motion carried unanimously.

Agenda Item H

Case No. V13-48 Curb Cuts

Fletcher stated that staff recommends approval with the following condition: That the existing curbs and sidewalk along the subject property's frontage be removed and replaced with a concrete sidewalk of no less than six feet in width; designed to the satisfaction of the City Engineer; and, that said sidewalk improvement begin at the property's northwest most frontage with Fife Street thence to the east edge of the abutting public right-of-way (alley).

Shamberger made a motion to find in the affirmative for all the Findings of Facts for V13-48 as revised in the Staff Report; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The Design Professionals have worked diligently to creatively utilize the uniquely shaped parcel and topography to maximize the proposed building footprint and related parking while maintaining adequate open space as well as adhering to requirements of the Morgantown Utility Board. The building had to be pushed to the rear of the property in order to bring storm water, sanitary sewer, and water to Fife Street. The Design Professionals have also included a shed-style roof that will direct water to Fife Street. Therefore, the parking had to be placed in front of the building.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

It appears that there has not been new development in the immediate area and in the same zoning ordinance that would have to adhere to this requirement. It also appears that there are curb cuts that exceed the twenty-two foot standard as evidenced in photographs submitted by the petitioner.

Finding of Fact No. 3 – The granting of this variance not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The building was pushed back to the rear of the property and parking located in front due to requirements of storm, sanitary sewer, and water. The Parking Authority may have to remove 2-3 parking spaces located on the opposite side of Fife Street for safety reasons; however, it appears that the Parking Authority may have installed the subject meters as a means to control on-street storage parking by adjacent uses. No significant grading will be necessary that would harm the adjoining property, public rights-of-way, or existing utilities. The variance should not affect emergency or service vehicle access to adjacent properties.

Finding of Fact No. 4 – The granting of this variance not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The redevelopment should enhance the value of the area and accordingly contribute to the market value of neighboring structures. Granting this variance cannot improve nor mitigate traffic congestion that is already present within the neighborhood. Likewise, the approval of this variance would have no impact on the land-use characteristics of the vicinity or zoning district.

Papandreas moved to approve V13-48 as requested with condition; seconded by Shamberger. Motion carried unanimously.

Bossio reminded Ms. Mardis that the Board's decision can be appealed to Circuit Court within thirty days after the decision and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- I. **BA13-01 / Gary Walden / 645 Pennsylvania Avenue:** Request by Edward R. Kohout, on behalf of Gary Walden, for an Administrative Appeal from Article 1373.02(B) as it relates to nonconforming structures at 645 Pennsylvania Avenue; Tax Map 30, Parcel 46; B-2, Service Business District.

Fletcher read the Staff report stating the following table identifies the processing steps as provided in Article 1383.03 of the Planning and Zoning Code [see staff report for table and illustrations].

The following exhibits are attached hereto and should be considered a part of the record for the subject administrative appeal:

- Exhibit 1Administrative appeal petition and accompanying documents.
- Exhibit 2Images illustrating location of subject realty.
- Exhibit 3Mr. Kohout's 03 SEP 2013 letter and staff's email response.
- Exhibit 4Staff's 26 JUN 2013 letter to Mr. Walden.
- Exhibit 5Staff's 09 AUG 2013 letter to Mr. Walden.
- Exhibit 6Fire Marshal Plans Rejected Documents
- Exhibit 711 OCT 2009 Fire Incident Report.
- Exhibit 814 JUN 20110 Demolition Permit.
- Exhibit 9Article 1373 "Nonconforming Provisions"
- Exhibit 10Article 1383 "Administrative Appeals"
- Exhibit 11Article 1375.01(A) "Responsibility for Administration and Enforcement"

ANALYSIS:

Petitioner's Grounds for Appeal

The following narrative responds to the arguments presented in Mr. Kohout's 13 AUG 2013 letter, which presents the petitioner's grounds for appeal.

1. The reference line in the subject letter identifies 647 Pennsylvania Avenue as the affected realty, which is incorrect. The true address of the subject realty associated with Parcel 46 of Tax Map 30 is 645 Pennsylvania Avenue.
2. The first sentence of the subject letter's first paragraph identifies 467 Pennsylvania Avenue as the affected realty, which is incorrect. The true address of the subject realty associated with Parcel 46 of Tax Map 30 is 645 Pennsylvania Avenue.
3. The second sentence of the subject letter's first paragraph purports that the subject structure suffered a fire casualty "two years ago", which is incorrect. Exhibit 6 of this report verifies that the subject fire casualty occurred on 11 OCT 2009; some 46 months prior to the Planning Division's 09 AUG 2013 determination that the nonconforming status of the subject realty's former use and structure had been abandoned.
4. The first sentence of the second paragraph is true.
5. The second sentence of the second paragraph states that, "The house was bought over 20 years ago..." Staff can only confirm that the Monongalia County Assessor's Office lists Parcel 46 of Tax Map 30 on its website as having been purchased by Tina M. Walden on 09 APR 2008.
6. The second sentence of the second paragraph states that, "...and was grandfathered in as to zoning and building codes..." Staff admits that the subject realty included a legal, pre-existing nonconforming grandfathered use and structure. Specifically, the three-unit "Multi-Family Dwelling" use was considered nonconforming because no on-site parking was provided. Additionally, the structure was considered nonconforming because it did not meet building envelope standards provided in Article 1347 "B-2, Service Business District." The petitioner's statement that the structure was grandfathered under "building codes" is not correct.
7. The second sentence of the second paragraph states that, "...and is valued at an estimated \$50,000." Staff cannot confirm or deny the petitioner's purported value of the subject property. However, the market value of the subject realty is not relevant to the present administrative appeal petition.
8. Staff confirms the portion of the third sentence of the second paragraph that Mr. Scott Krabill has represented Mr. Walden in pursuing a building permit to reconstruct the nonconforming use and structure. However, not all "requested documentation" has been submitted to the City. If this were true, then a building permit would have been issued to reconstruct the nonconforming use and structure.
9. Staff cannot confirm or deny the fourth sentence of the second paragraph as to how much Mr. Walden has spent in submitting building permit application related plans to the

City. However, the amount spent by Mr. Walden in pursuing a building permit is not relevant to the present administrative appeal petition.

10. Staff confirms the petitioner's third paragraph that a letter dated 09 AUG 2013 was sent to Mr. Walden with the determination that the grandfathered nonconforming status for the use and structure at 645 Pennsylvania Avenue had been abandoned.
11. Staff denies the assertion in the petitioner's fourth paragraph that "all necessary documentation" has been provided to the City in relation to the requisite building permit application. If this were true, then a building permit would have been issued to reconstruct the nonconforming use and structure.
12. Staff confirms that, in the fourth paragraph, the petitioner seeks relief from the Board to overrule the Planning Division's 09 AUG 2013 determination that the subject nonconforming status has been abandoned.
13. Staff denies the petitioner's assertion in the fourth paragraph that the Board has the authority to order the City to issue the building permit. The City's review and approval of a building permit application includes compliance with regulations, ordinances, and codes beyond the scope of the Planning and Zoning Code and beyond the scope of authority and influence of the Board of Zoning Appeals.

Board's Review Authority

The matter before the Board is not to determine whether the property owner and/or his agent submitted a complete building permit application to the City of Morgantown. Specifically, the incomplete building permit application determinations made by several plans reviewers (i.e., Building Code, Fire Code, Engineering) are not under the review authority of the Board of Zoning Appeals as these plans reviewers are not charged with the enforcement of the zoning ordinance (see Article 1375.01(A) and Article 1383.01).

The matter before the Board is to decide whether or not the Planning Division correctly determined that the legal, pre-existing, nonconforming use and structure had been discontinued and abandoned by virtue of the owner's failure to undertake reconstruction of the subject use and structure within twelve (12) months following the 11 OCT 2009 fire casualty.

Bossio recognized the petitioner's representative, Edward Kohout of 13 Oceanview Drive, who stated the issue before the Board is abandonment which requires proof of intent to abandon a right or use or property. The Staff report displays there was never intent to abandon the property which had always been used as a three unit apartment house that had burned down on October 11, 2009. Mr. Walden is trying to rebuild the structure in the same footprint as before and had applied for permits in early 2010 to raze the remaining debris. By September of 2011 a building permit was applied for to rebuild the structure. The Staff is claiming there was a 46 month delay which is not true and they are contesting that statement. Per the Article in the Planning and Zoning Code, it states that the person has 12 months to apply for necessary permits from the point of abandonment. Kohout stated there was never a point of abandonment and it is difficult to determine at what point the 12 month period begins. When looking at the exhibits, there were three separate building permit applications filed once the structure was completely razed and the City has delayed the process with constant requests for additional information. The issue before the Board is whether or not the subject property has been

abandoned by the owner which is not true as everything that was requested by the City was submitted. It was suggested to him by the Planner to ask the Board to table the request until additional information can be obtained. Mr. Walden does not want to table the request and wants a resolution. He noted the building permit had been signed off on and asks why the actual permit had not been issued. Mr. Kohout read through various emails to prove the relationship with the City was casual and was willing to work with Mr. Walden. He feels Mr. Walden has been jerked around with all the requirements of this permit and he just wants to build another house with the same exact footprint.

Cardoso referred to the Planning and Zoning Code and read that “when a legal and pre-existing nonconforming use is discontinued or abandoned” and noted that the word “discontinued” has a different meaning than the word “abandoned”. Cardoso referred to Article 1373.02(D)(E) as it refers to non-conforming structures being damaged by fire, flood, explosions or other casualty and how they may be constructed and used as before “if such reconstruction is undertaken within 12 months of such casualty.”

Kohout explained the process began when an application was filed to raze the remaining debris within 12 months after the fire. As far as the word discontinued, the City should have notified Mr. Walden on October 11, 2010 to state that time had expired, but instead did not hold to the strict deadline stated in the code.

Cardoso referred to the certified letter that was sent to Mr. Walden in February of 2011 that stated his right to reconstruct the structure would expire on June 14, 2011.

Kohout noted the City still continued to work with Mr. Walden after June 14, 2011 which proves the City abandoned their argument that time had expired.

Bossio noted that there is a certain amount of time to complete requirements for a building permit. The Planning and Engineering Departments are separate departments and the emails produced as an example are mostly from the Engineering Department. The Board of Zoning Appeals works with the Planning Department with the administrative appeal that has been filed.

There being no further comments or questions by the Board, Bossio asked if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized James Giuliani of 256 Prairie Avenue, who stated it seems like the City was working with Mr. Walden to complete the building permit process and does not feel anything was discontinued or abandoned. He noted that Engineering is part of the Planning process, and rarely does he receive instructions in writing on his building permits and therefore does not complete the requests because things change so frequently within the City.

Bossio recognized Scott Krabill, civil engineer on the project, who referred to the letter that was given in February and stated an opportunity was given to respond or revise the document package. The memo dated August 9, 2013, which addressed the final submittal, had 61 items listed as missing, omitted or improper. After reviewing items the listed, he found a total of 4 that could be considered as needed more information or clarification. The first request he received in two years was for the floodway and floodplain area with the elevations. Under the section for the fire department, it noted that additional information was needed that was not on the original form. It did not give the specific information needed and he could not anticipate what was

required. He noted that it does not appear well professionally to get a letter with 61 items that needs completed when only 4 of the items could be considered improper.

Bossio recognized the petitioner, Gary Walden of 668 Westview Drive, who stated that every time a permit was submitted, extra items were needed. At no time did the permits stop for the property. In July they were notified they had a couple of weeks to finish the job, and were told they needed a sprinkler plan. A plan was submitted. The only time that was taken off of the project was when he had a heart attack and his engineer had a medical problem. He feels everything has been submitted that was asked for and a permit should be issued.

There being no further public comments, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that Staff recommends that the Board render a decision upholding the Planning Division's determination that the grandfathered status of the former use and structure at 645 Pennsylvania Avenue has been discontinued and abandoned based on the following findings of fact and conclusions of law.

Findings of Fact

1. The use at 645 Pennsylvania Avenue in existence prior to October 2009 was considered a legal, pre-existing, nonconforming, grandfathered three-unit "Multi-Family Dwelling" because no on-site parking spaces were provided.
2. The structure at 645 Pennsylvania Avenue in existence prior to October 2009 was considered a legal, pre-existing, nonconforming, grandfathered structure because it did not meet building envelope standards provided in Article 1347 "B-2, Service Business District."
3. The structure at 645 Pennsylvania Avenue was destroyed by fire on or about 11 OCT 2009.
4. As a result of the 11 OCT 2009 fire casualty, a permit was issued on or about 14 JUN 2010 for the demolition of the structure at 645 Pennsylvania Avenue.
5. On 28 FEB 2011, a certified letter was sent to Mr. Walden by the Planning Department advising him that the right to reconstruct the legal, pre-existing, nonconforming use and structure would expire on 14 JUN 2011.
6. On or about 24 MAY 2011, a pre-application meeting with the Technical Review Team was conducted with the property owner.
7. Building permit applications to reconstruct the grandfathered use and structure were submitted on or about 26 SEP 2011 and again on or about 18 APR 2013. It was determined by City plans reviewers that both building permit application submissions were incomplete.
8. On 26 JUN 2013, a certified letter was sent to Mr. Walden by the Planning Division providing final notice to file a complete building permit application to reconstruct the legal, pre-existing, nonconforming use and structure.

9. A building permit application to reconstruct the grandfathered use and structure was submitted on 17 JUL 2013. It was determined by City plans reviewers that the building permit application submission was incomplete.
10. On 09 AUG 2013, a certified letter was sent to Mr. Walden by the Planning Division notified him that his obligation to submit a complete building permit application, for the purpose of protecting his right to reconstruct the subject nonconforming structure at 645 Pennsylvania Avenue had not been fulfilled and that failure to fulfill this obligation resulted in an abandonment of the nonconforming structure.
11. Although Mr. Kohout's 13 AUG 2013 letter, considered the grounds for the present appeal, comes some 46 months after the subject structure's 11 OCT 2009 fire casualty, the petitioner admits in said letter that, "Two years ago this old dwelling house, used as a rental unit, caught fire and was a total loss."

Conclusions of Law

1. Article 1373.02(E) provides that any legal, pre-existing nonconforming structure damaged by fire, flood, explosion or other casualty may be reconstructed and used as before, if such reconstruction is undertaken within twelve (12) months of such casualty, and if the restored structure has no greater coverage and contains no greater content (measured in cubic feet) than before such casualty.
2. The legal, pre-existing nonconforming use and structure at 645 Pennsylvania Avenue was destroyed by fire on or about 11 OCT 2009. A strict interpretation and application of Article 1373.02(E) establishes a twelve (12) month deadline of 11 OCT 2010 to reconstruct the nonconforming structure and use as the combination of land and structure at 645 Pennsylvania Avenue ceased to continue on 11 OCT 2009.
3. A permit was issued on or about 14 JUN 2010 for the demolition of the structure at 645 Pennsylvania Avenue. A more moderate interpretation and application of Article 1373.02(E) establishes a twelve (12) month deadline of 14 JUN 2011 to reconstruct the nonconforming structure and use, which was offered in the 28 FEB 2011 certified letter from the Planning Department to Mr. Walden.
4. The 09 AUG 2013 certified letter to Mr. Walden from the Planning Division notifying him of the determination that the subject nonconforming use had been abandoned was 46 months after the structure at 645 Pennsylvania Avenue suffered fire casualty and 38 months after the permit was issued for the demolition of the remaining structure at 645 Pennsylvania Avenue.
5. The Planning Division correctly determined that the nonconforming protections provided in Article 1373 "Nonconforming Provisions" of the City's Planning and Zoning Code to reconstruct the grandfathered nonconforming three-dwelling unit use and structure at 645 Pennsylvania Avenue have expired and that the subject nonconforming status has been abandoned.
6. Because the legal, pre-existing nonconforming use and structure have been abandoned, the subject realty may only be developed and/or used in compliance with the Zoning Ordinance provisions in affect at the time of development and/or use.

Fletcher noted that the Planning Division would have no problem with the Board tabling the request to give the petitioner time to submit further documents necessary to complete the building permit process.

Bossio noted the extended time period that took place from when the house burned down to when it was razed, but suggested tabling the request as Staff suggested with a new deadline date to submit the necessary documents.

Shamberger suggested a shorter time frame for submitted documents should they choose to table the request.

Papandreas referred to Finding of Fact 5 in the Staff Report which stated that a certified letter was sent to the petitioner approximately two years after the permit had expired giving final notice to file a complete building permit application. He noted there are two ways to read the statement with one being that the City has gone above and beyond to give the petitioner the benefit of the doubt, or two, the City might have still be considering a non-conforming structure to be built on this property. Papandreas feels the offer by the Staff to table the request is generous.

Cardoso expressed that the City seemed to try and work with the petitioner outside of the deadlines, yet there were many applications that were not submitted or corrected and she is in favor of tabling the request with a definite deadline date.

Fletcher suggested giving the petitioner until the December 18, 2013 Board meeting to complete the building permit applications. Cardoso, Bossio and Shamberger felt that time frame was too generous but agreed to that time frame.

Papandreas made a motion to table Case No. BA13-01 to the Board of Zoning Appeals December 18, 2013 hearing to allow the petitioner to submit a complete building permit application; seconded by Shamberger. Motion carried unanimously.

Bossio reiterated to Mr. Kohout that his petitioner has until the Board's December 18, 2013 hearing to submit the necessary documents for the building permit. Kohout understood and thanked the Board for their generosity.

J. CU13-16 / Jared Hartsock / 1450 Earl L. Core Road: Request by Jared Hartsock for conditional use approval of "Automotive Sales" use located at 1450 Earl L. Core Road; Tax Map 31, Parcel 98.3; B-5, Shopping Center District.

Fletcher read the Staff Report stating the petitioner seeks to establish a pre-owned "Automotive Sales" use at the subject site. Table 1331.05.01 "Permitted Land Uses" provides that the development of "Automotive Sales" uses in the B-5 District requires conditional use approval by the Board of Zoning Appeals. Addendum A of this report illustrates the location of the subject site.

Using a site plan provided by the property owner, Staff completed a minimum parking requirement calculation for the proposed "Automotive Sales" use along with the existing *Tanning World* and *CWS Copiers* use types in the subject multi-tenant commercial building. Exhibit 1,

attached hereto, illustrates a minimum parking requirement of 17 spaces for the three use types; a total on-site parking supply of 48 spaces; and, a parking surplus of 31 spaces.

It should be noted that there are two (2) existing “Automotive Sales” uses located within 550 feet of the petitioner’s proposed storefront – *Superior Ford Lincoln* and *J.D. Byrider*.

Bossio recognized the petitioner, Jared Hartsock of Hartsock Automotive, LLC, who stated he is requesting to open an automotive dealership located at 1450 Earl L. Core Road.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a conditional use by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant. Addendum B of this report provides Staff recommended revisions to the petitioner’s findings of fact (deleted matter struck through; new matter underlined).

Staff recommends approval with the condition that the beneficiary of the Board’s conditional use approval, if granted, is specific to the petitioner’s related business organization and may not be transferred without prior approval of the Board.

Cardoso made a motion to find in the affirmative for all the Findings of Facts for CU13-16 as revised in Staff report; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

Existing use is already retail.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The “Automotive Sales” use and tenant space occupancy will comply with related Building Code and Fire Code requirements.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

No structural changes are required or proposed to the building that would affect existing light distribution and airflow within the immediate area.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

The proposed “Automotive Sales” use will occupy an existing multi-tenant commercial retail structure.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

Only have two employees. A residential use of the property is not proposed for the conditional “Automotive Sales” use.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

Existing structure of building won’t change. The proposed “Automotive Sales” use does not appear to require public services, facilities, or utilities that are not already available within the immediate area.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

No alterations are proposed to the existing commercial building. The proposed “Automotive Sales” use occupy an existing multi-tenant commercial retail building, which is located within 500 feet of two existing “Automotive Sales” uses including *Premier Ford Lincoln* and *J.D. Byrider*.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

High visibility, good traffic patterns within the City. The proposed location of the “Automotive Sales” use is within a heavily traveled commercial corridor that includes two existing “Automotive Sales” uses within 500 feet of the subject site.

Papandreas moved to approve CU13-16 as requested with staff report recommended condition; seconded by Cardoso. Motion carried unanimously.

Bossio reminded Mr. Hartsock that the Board’s decision can be appealed to Circuit Court within thirty days after the decision and that any work related to the Board’s decision during this period would be at the sole financial risk of the petitioner.

K. V13-42 / Sheetz, Inc. / 1012 University Avenue: Request by Robert Franks, on behalf of Sheetz, Inc., for relief from the Planning and Zoning Code under seven (7) variance petitions relating to the development of a *Sheetz* “Gas Station Mini-Mart” use at 1012 University Avenue.

Bossio asked if anyone present objected to combining the public hearings for the cases related to the *Sheetz* development. James Giuliani rose to object. Bossio stated that a public hearing would be conducted for each case related to the *Sheetz* development.

Fletcher read the combined Staff Report stating the petitioner seeks to raze the former *Premier* dealership buildings and construct a *Sheetz* “Gas Station Mini-Mart” use at 1012 University Avenue. Addendum A of this report illustrates the location of the subject development site.

The proposed development program includes:

- A *Sheetz* gas station and convenience store.
- One-story building with approximately 6,407 sq. ft. of GFA.
- 5 access driveways from University Avenue, Foundry Street, Chestnut Street, and two on Kirk Street.
- 5 fueling stations with 10 fueling nozzles under an accessory canopy structure.
- 41 on-site surface parking spaces.
- A four-month construction schedule with construction commencement desired in Spring 2014.

Given the site’s location, the proposed auto-dependent use, and existing roadway congestion, Staff undertook a collaborative technical review process with West Virginia Division of Highways for the purpose of maximizing adverse impact mitigation to public safety, and welfare and on City and State roadway system operations. A number of revisions to the petitioner’s Traffic Impact Analysis, driveway locations and designs, and site circulation planning were identified.

The petitioner's present site plan incorporates all City and WVDOH recommended and required revisions.

Addendum B of this report provides a Planning and Zoning Conformity Report that identifies:

- Planning and Zoning Code provisions related to the subject development;
- Whether or not the subject development meets standards identified therein;
- Case numbers for variance petitions requiring approval by the BZA; and,
- Comments concerning site and building design revisions that have been made since the petitioner's 14 MAY 2013 pre-application meeting with the Technical Review Team.

The following list summarizes requisite variance approvals:

V13-42To exceed the 20' maximum setback standard from University Avenue and from Kirk Street.

V13-43To permit the development of the proposed fuel canopy accessory structure between the principal structure and University Avenue.

V13-44To permit the development of on-site surface parking between the building line of the principal structure and University Avenue, Kirk Street, and Chestnut Street.

V13-45To permit:

1. The development of two (2) proposed parking spaces closest to the Kirk Street (east) driveway entrance that are closer than 20 feet from the public right-of-way crosswalk; and,
2. The development of the proposed Kirk Street (east) driveway entrance that is closer than thirty-five (35) to the intersecting street right-of-way line of Chestnut Street and closer than thirty (30) feet to the end of the intersecting curb radius of Chestnut Street; and,
3. The development of the proposed University Avenue, Kirk Street (west), Kirk Street (east), and Chestnut Street driveway entrances that are greater than twenty-six (26) feet in width at the curb line and greater than twenty-two (22) feet in width at the street right-of-way line.

V13-46To exceed the maximum parking standard by two (2) spaces.

V13-47To permit the development of landscape buffer areas for the proposed rows of parking abutting University Avenue that are less than the minimum 10-foot standard.

V13-53To permit the development of a one-story principal structure rather than the minimum requirement of two stories in the B-4 District.

Fletcher stated that it should be noted the developer has reduced the number development program nonconformity areas in preliminary plans reviewed during the 14 MAY 2013 pre-application meeting with the Technical Review Team from ten (10) to seven (7). Additionally,

the extent of requisite variance relief within the majority of the remaining seven (7) nonconformity areas has been significantly reduced.

Agenda Item K

Case No. V13-42 Maximum Setbacks

Bossio recognized the petitioner's representative, Aaron Hensley Altoona PA, who stated he concurs with the Staff Report for V13-42.

Bossio introduced the civil engineer for the project who explained the location of the proposed project stating there is a significant grade difference between University Avenue and Chestnut Street. To maximize the lot, the existing retaining wall will remain to allow the structure to sit back in the corner of Chestnut and Foundry which will allow for truck maneuvering to the pumps. Most of the variances requested are related to transportation access and every effort has been made to minimize the number of variance requests.

There being no comments or questions by the Board, Bossio opened the public hearing for Case No. V13-42 asking if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized James Giuliani of 256 Prairie Avenue, who stated he is opposed to Case Number V13-42. He explained that the application submitted by *Sheetz* is for a single use gas station or mini-mart. There are certain standards in the B-4 District and those standards are the variances being requested. Giuliani states that *Sheetz* gas station is much more than a gas station or mini-mart as they are recognized as a restaurant as well. He referred to an article that was written by *Sheetz* which states the company started as a food business in 1952 and is now selling more food than many fast food chain restaurants. Giuliani stated that *Sheetz* is not simply a gas station or mini-mart and noted there is no reference in the Staff Report to the Comprehensive Plan, the Downtown Plan, or Main Street Morgantown and how *Sheetz* would fit into the historical goals of the City.

There being no further public comments, Bossio invited the petitioner to the podium for a five-minute rebuttal; the *Sheetz* representatives declined.

Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that Staff recommends, without condition, that variance relief be granted to exceed the 20' maximum setback standard from University Avenue and from Kirk Street as illustrated on the site plan dated 09 OCT 2013.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V13-42 as revised in Staff Report; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

This property is bounded on all four sides by public rights-of-way. Given the proposed "Gas Station Mini-Mart" single use of the subject site, constructing a building that is within twenty feet of all four abutting rights-of-way impedes the development of a by-right use in the B-4 District that requires

automobile maneuvering to access fueling stations.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The principal structure of the existing “Gas Station Mini-Mart” use located in the B-4 District at 1345 University Avenue exceeds the maximum twenty-foot setback standard to enable automobile maneuvering and fueling station access.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The site appears to have been designed to maximize automobile and delivery truck access and maneuvering given topographic elevation changes between University Avenue and Chestnut Street and to mitigation traffic impact to adjoining roadways and neighboring properties.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The increased setback from the two streets provides necessary maneuvering room and parking to serve the facility. The nature of the requested variance cannot contribute to or mitigate existing congestion on neighboring streets.

Papandreas moved to approve V13-42 as requested; seconded by Cardoso. Motion carried unanimously.

Bossio reminded Ms. Hennsley that the Board’s decision can be appealed to Circuit Court within thirty days after the decision and that any work related to the Board’s decision during this period would be at the sole financial risk of the petitioner.

Agenda Item L

Case No. V13-43 Accessory Structures

Bossio recognized the petitioner’s representative, Aaron Hennsley of Altoon PA, who referred to the Staff Report concerning the recommended conditions associated with the accessory structure. Condition 1 relates to wrapping the columns on the fuel canopy. Hennsley agreed to using brick or stone on the columns but requested to only use the required materials at a maximum of four feet up the column instead of to the bottom of the canopy as it would create a safety risk in the event a vehicle would run into a column. Condition 2 requests the top of the canopy be covered over the structural steel. Hennsley asked for permission to paint the structural steel instead of providing materials to cover the canopy. Condition 3 refers to the number of footcandles underneath the canopy and noted Staff recommended to not exceed 8 footcandles. He stated that the typical *Sheetz* store has 35 footcandles directly underneath the canopy and all the lighting is recessed with LED lighting. The light does not shine into the public’s eyes and the lighting is needed for the security of the customers in the night hours.

Bossio asked why only supply four feet of brick on the columns when cars do not reach four feet in height. Hennsley explained that brick above four feet in height could fall onto vehicles if a car would hit the column at bumper level, which would pose safety risks for the customers.

Bossio inquired if the brick would be a veneer stone. Hennsley stated that real stone would be used.

Bossio invited Bob Franks of Altoona, PA to the podium for further clarification on the materials that will be used on the columns. Franks explained that *Sheetz* does use veneer stone when constructing other stores, but this structure will be using real stone. Bossio asked if *Sheetz* would be opposed to using veneer stone as it would not cause as much damage when built on the entire columns. Franks stated that veneer stone had never been used on their canopy columns but would inquire with the company. Hennsley explained in more detail the position and location of the proposed columns.

Bossio asked if *Sheetz* had ever had a canopy cover. Franks stated they do not use canopy covers but noted they would be willing to paint the top so everything would blend together.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized James Giuliani of 256 Prairie Avenue, who referred to the Comprehensive Plan and noted the Boulevard at the proposed location is considered a pedestrian thoroughfare as opposed to a vehicular thoroughfare. Giuliani explained that *Sheetz* has lowered their canopies in other cities to allow for lower lighting and less noise disturbances and feels the City should look at how people that live in close proximity will be affected.

Bossio recognized Christian Abildso of 16 Wabash Street who stated that he is the Chair of the City's Pedestrian Safety Board and that the area of the proposed structure will increase pedestrian traffic and noted that two pedestrians have already been killed in the City recently by crossing a street. Abildso asked how pedestrian safety and flow will be accommodated with the increase in foot traffic after proposed structure is completed.

Fletcher referred to the site plan and noted the driveway entrance on Foundry Street would be a right out only and the road would be widened to allow for a turning lane. They are going to use a hardscape with pavers or concrete to increase the pedestrian refuge area at the Foundry Street and University Avenue intersection and the area of the sidewalk will be increased up to the mid-block driveway entrance.

There being no further public comments, Bossio invited the petitioner to the podium for a five-minute rebuttal; the *Sheetz* representatives declined. Bossio declared the public portion closed and asked for Staff recommendations.

Fletcher stated that Staff recommends, with the following conditions, that variance relief be granted to permit the development of the proposed fuel canopy accessory structure between the principal structure and University Avenue as illustrated on the site plan dated 09 OCT 2013.

Condition 1 – That all vertical structural supports below the fuel canopy accessory structure must be wrapped, from grade to canopy, in masonry and/or masonry veneer brick and/or stone that integrates with and compliments the masonry and/or masonry veneer brick and/or stone cladding illustrated on principal structure elevation drawings dated 07 OCT 2013.

Condition 2 – That, given the existing and preferred development pattern of multi-story buildings in the B-4 District and the fact that the elevation of the proposed fuel canopy

structure is lower than surrounding buildings, the top of the proposed fuel canopy accessory structure must be covered so that the horizontal structural members or structural skeleton of the canopy is not visible from higher elevations thereby protecting and preserving downtown viewsheds. The aerial photo below illustrates a view of a similar fuel canopy that this condition is intended to mitigate.

Condition 3 – That, to ensure glare does not interfere with the ability of motorists to safely see nearby roadways, pedestrians, and/or hazards on the roadway, the combination of lighting levels and shielded fixtures below the fuel canopy accessory structure may not exceed eight (8) footcandles.

Fletcher noted that veneer materials were recommended due to lower costs and less damage if a vehicle were to hit the columns. Staff had received several phone inquiries in opposition to the proposed accessory structure due to possible impacts on the surrounding built environment. The Staff recommendations intent was to blend the accessory structure with the principal structure. Painting of the canopy was never considered but noted that would be an acceptable way to address the concern of the canopy from above or at higher elevations given the height of surrounding buildings. Fletcher understands the request for 35 footcandles near a highway, but does not agree with the intensity of that lighting in a downtown situation and feels 8 footcandles would be appropriate illumination for the downtown district.

Papandreas asked if the Star City *Sheetz* had 35 foot candles and Hennisley confirmed.

Cardoso asked the Board to review the conditions listed in the Staff Report and asked for opinions on materials used on the columns and the height proposed versus Staff recommendations. The Board discussed the appearances of surrounding *Sheetz* stores and determined that four feet of materials would be sufficient and then a color similar to bronze that was suggested by the petitioner for the remaining twelve feet of column.

The Board discussed the light intensity and agreed that 35 foot candles would not be appropriate for that area as there are dwelling units located across the street. Fletcher suggested speaking to the petitioner and negotiating a lower lumination.

Bossio invited Franks back to the podium and explained that a different store in Raleigh, North Carolina had the same concerns and developed a code within their municipality which allowed them to settle at 20 footcandles. Franks explained the brightness is for security purposes to allow for cameras to record clearly and efficiently.

Papandreas compared the intensity of 20 footcandles to the reflection off a white piece of paper using his cellular phone.

Franks explained the intensity of lighting is reflected directly underneath the canopy and diminishes when going away from structure.

Fletcher suggested a lighting plan be submitted that that includes recessed, properly shielded lighting that is at or near 0 footcandles at the property boundary.

Fletcher suggested 20 footcandles be used as a condition in the variance petition. The Board agreed.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V13-43 as revised in Staff Report; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

This property is bounded on all four sides by public rights-of-way and any accessory structure would be required to be placed between the principal building and a street right-of-way.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The existing “Gas Station Mini-Mart” use located in the B-4 District at 1345 University Avenue includes an accessory fueling station canopy between the principal structure and University Avenue.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The Board’s conditions to advance the architectural design and lighting provisions of the proposed accessory fueling station canopy structure serve to integrate with and compliment the architectural design of the principal building, protect viewsheds, and mitigate unnecessary glare thereby contributing to properties and improvements within the immediate area.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

Accessory fueling station canopy structures at “Gas Station Mini-Mart” uses, which are permitted by-right in the B-4 District, are common development facilities that are intended to provide customers cover, relief from inclement weather, and convenience. The develop appears to have worked with the City Engineer and West Virginia Division of Highways to maximize traffic impact mitigation given the proposed location of the accessory fueling station canopy structure by restricting access from University Avenue and Foundry Street as illustrated on the site plan dated 09 OCT 2013.

Papandreas moved to approve V13-43 as requested with revised conditions; seconded by Shamberger. Motion carried unanimously.

NOTE: The following conditions were included in the motion.

1. That all vertical structural supports below the fuel canopy accessory structure must be wrapped, from grade to at least four (4) feet in height, in masonry and/or masonry veneer brick and/or stone that integrates with and compliments the masonry and/or masonry veneer brick and/or stone cladding illustrated on principal structure elevation drawings dated 07 OCT 2013. Additionally, all vertical structural supports above the masonry or masonry veneer material must be a bronze or similar color as suggested by the petitioner.
2. That, given the existing and preferred development pattern of multi-story buildings in the B-4 District and the fact that the elevation of the proposed fuel canopy structure is lower than surrounding buildings, the top of the proposed fuel canopy accessory structure must be covered by uniform white paint or similar treatment so that the horizontal structural members or structural skeleton of the canopy is camouflaged from higher elevations thereby protecting and preserving downtown viewsheds. The aerial photo below illustrates a view of a similar fuel canopy that this condition is intended to mitigate.

3. That, to ensure glare does not interfere with the ability of motorists to safely see nearby roadways, pedestrians, and/or hazards on the roadway, the combination of lighting levels and shielded fixtures immediately below the fuel canopy accessory structure may not exceed twenty (20) footcandles.

Bossio reminded Ms. Hennsley that the Board's decision can be appealed to Circuit Court within thirty days after the Board's decision and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

Agenda Item M

V13-44

On-Site Surface Parking

Bossio recognized Aaron Hennsley of Altoona, PA who stated he agreed with the Staff Report as presented.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized James Giuliani of 256 Prairie Avenue who referred to the Findings of Fact 2 in the Staff Report and noted that parking is not required in the B-4 District. All *Sheetz* stores are located on major thoroughfares and the proposed structure will be located in a pedestrian friendly environment. Giuliani noted that Board members were not referring to the Comprehensive Plan when reviewing the variance petitions and no input has been received from Main Street Morgantown. He compared *Sheetz* as the "*Walmart* of gas stations" and stated that *Sheetz* is not a gas station/mini mart as proposed in the Staff Report but rather a restaurant that will have onsite parking and offer various retail options. Parking standards should therefore be based on a restaurant rather than a gas station/mini mart use and every variance proposed is tailored to a B-2 District rather than a B-4 District.

There being no further public comments, Bossio invited the petitioner to the podium for a five-minute rebuttal; the *Sheetz* representatives declined. Bossio declared the public portion closed and asked for Staff recommendations.

Fletcher stated that Staff recommends, without condition, that variance relief be granted to permit the development of on-site surface parking between the building line of the principal structure and University Avenue, Kirk Street, and Chestnut Street as illustrated on the site plan dated 09 OCT 2013.

Shamberger made a motion to find in the affirmative for all the Findings of Facts for V13-44 as revised in Staff Report; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

This property is bounded on all four sides by public right-of-way and any surfacing on-site parking spaces would be required to be placed between the principal building and a street right of way.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The existing "Gas Station Mini-Mart" use located in the B-4 District at 1345 University Avenue includes parking spaces between the principal structure and University Avenue.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

There appears to be sufficient landscape and hardscape areas that will be developed to buffer parking areas from view of adjoining public rights-of-way.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

There appears to be sufficient landscape and hardscape area that will be developed to significantly improve parking area buffering over the previous "Automotive Sales" use and the existing "Gas Station Mini-Mart" use located at 1345 University Avenue.

Shamberger moved to approve V13-44 as requested without conditions; seconded by Cardoso. Motion carried unanimously.

Bossio reminded Ms. Hennsley that the Board's decision can be appealed to Circuit Court within thirty days after the decision and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

Agenda Item N

V13-45 Performance Standards

Bossio recognized Hennsley of Altoona, PA who agreed with Staff recommendations for the proposed variance.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized James Giuliani of 256 Prairie Avenue who referred to the map provided and asked Mr. Simmons to explain the accesses of the development. Giuliani expressed concerns with traffic flow and proposed parking patterns. He asked if *Sheetz* had done a traffic study and how many vehicles enter their parking lot on a daily basis.

There being no further public comments Bossio invited Todd Simmons of Greenville, SC, to the podium for a chance of rebuttal. Simmons stated that *Sheetz* has worked extensively with the City regarding a traffic study and access patterns and all plan modifications have been approved by the City Engineer and the West Virginia Division of Highways.

Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that Staff recommends, without condition, that variance relief be granted to permit, as illustrated on the site plan dated 09 OCT 2013 but with the exception noted below:

1. The development of two (2) proposed parking spaces closest to the Kirk Street (east) driveway entrance that are closer than 20 feet from the public right-of-way crosswalk; and,

2. The development of the proposed Kirk Street (east) driveway entrance that is closer than thirty-five (35) to the intersecting street right-of-way line of Chestnut Street and closer than thirty (30) feet to the end of the intersecting curb radius of Chestnut Street; and,
3. The development of the proposed University Avenue and Kirk Street (west) driveway entrances greater than twenty-six (26) feet in width at the curb line and greater than twenty-two (22) feet in width at the street right-of-way line. However, the Kirk Street (east) and Chestnut Street driveway entrances must meet the maximum twenty-two (22) feet in width standard at the street right-of-way line.

Cardoso made a motion to find in the affirmative for all the Findings of Facts for V13-45 as recommended in Staff Report; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Given the fact that the site is bound on all sides by public right-of-way, topographic changes between University Avenue and Chestnut Street, and existing traffic congestion along University Avenue during peak travel periods, the location and design of proposed driveway entrances, as illustrated on the site plan dated 09 OCT 2013, observe all City and West Virginia Division of Highways requested and required site plan modifications.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The location and design of proposed driveway entrances, as illustrated on the site plan dated 09 OCT 2013, observe best access management design and performance practices as requested and required by the City and West Virginia Division of Highways given the proposed “Gas Station Mini-Mart” use, congestion patterns along adjoining City and State roadways, and topographic changes between University Avenue and Chestnut Street; all of which appear to enhance conditions that existed for the previous “Automotive Sales” use.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The location and design of proposed driveway entrances, as illustrated on the site plan dated 09 OCT 2013, observe all City and West Virginia Division of Highways requested and required site plan modifications; all of which were intended to mitigate adverse impacts on neighboring properties and improvements given the proposed “Gas Station Mini-Mart” use.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The location and design of proposed driveway entrances, as illustrated on the site plan dated 09 OCT 2013, observe all City and West Virginia Division of Highways requested and required site plan modifications; all of which were intended to maximize adverse impact mitigation to public safety, and welfare and on City and State roadway system operations given the proposed “Gas Station Mini-Mart” use.

Cardoso moved to approve V13-45 as recommended in the Staff Report; seconded by Shamberger. Motion carried unanimously.

Bossio reminded Ms. Hennsley that the Board's decision can be appealed to Circuit Court within thirty days after the decision and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

Agenda Item O

V13-46 Maximum Parking Standards

Bossio invited Aaron Hennsley of Altoona, PA who stated that Sheetz is asking to exceed the parking standards by two spaces.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized James Giuliani of 256 Prairie Avenue who referred to the Staff Report and noted that all variances and discussions are centered around *Sheetz* being classified as a "gas station/mini-mart". Parking standards should meet that of a restaurant and not a "gas station/mini mart." Giuliani referred to the Comprehensive Plan and noted that the B-4 District is pedestrian centered and not for vehicle use.

There being no further public comments, Bossio invited the petitioner to the podium for a five-minute rebuttal; the *Sheetz* representatives declined. Bossio declared the public portion closed and asked for Staff recommendations.

Fletcher stated that Staff offers no recommendation or conditions as to whether or not variance relief should be granted to exceed the maximum parking standard so that 41 on-site parking spaces can be developed as illustrated on the site plan dated 09 OCT 2013.

Shamberger made a motion to find in the affirmative for all the Findings of Facts for V13-46 as revised in the Staff Report; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The parking calculation utilized is for the "Gasoline Service Station with Mini-Mart". The intended use does have these characteristics; however, it also provides a restaurant component that exceeds typical "mini-mart" customer demand. The additional parking is intended to ensure that the use does not negatively impact surrounding street infrastructure by customers.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The variance will allow this property and the intended use to provide safe and adequate parking for potential customers, as is currently enjoyed by other properties in the vicinity and zoning district.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Additional parking will aid in providing adequate parking on-site and reducing the potential for the need to park "off-site".

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The parking proposed is consistent with the surrounding areas by providing adequate parking for the proposed use “on-site”.

Papandreas moved to approve V13-46 as requested without conditions; seconded by Shamberger. Motion carried unanimously.

Bossio reminded Ms. Hennsley that the Board’s decision can be appealed to Circuit Court within thirty days after the Board’s decision and that any work related to the Board’s decision during this period would be at the sole financial risk of the petitioner.

Agenda Item P

V13-47 Landscaping

Bossio recognized Aaron Hennley of Altoon, PA, who stated he agreed with Staff recommendations.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized James Giuliani of 256 Prairie Avenue who referred to the Staff Report and noted that landscaping adds to the beautification of the City and the Comprehensive Plan states that standards must be met in the B-4 District and the variances before the Board go against that Plan. Giuliani noted there has been no input from the Traffic Commission or Main Street Morgantown and feels the different committees should have an opportunity to express concerns rather than just the City Planner. He asked the Board to discuss how this development fits into the Comprehensive Plan.

There being no further public comments, Bossio invited the petitioner to the podium for a five-minute rebuttal; the *Sheetz* representatives declined. Bossio declared the public portion closed and asked for Staff recommendations.

Fletcher stated that Staff recommends, with the following condition, that variance relief be granted to permit the development of landscape buffer areas for the proposed rows of parking abutting University Avenue that are less than the minimum 10-foot standard as illustrated on the site plan dated 09 OCT 2013. The recommended condition is that, given the insufficient width of landscape buffer area provided for the row of five (5) parking stalls along University Avenue closest to the Foundry Street intersection, a vertical hardscape design solution must be incorporated to the satisfaction of the Planning Division.

Shamberger made a motion to find in the affirmative for all the Findings of Facts for V13-47 as revised in Staff report; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Given turning and maneuvering constraints on ingress, egress, and on the site for delivery vehicles, compliance with the 10-foot landscape buffer would otherwise eliminate the two rows of parking along University Avenue flanking the proposed mid-block driveway entrance.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

With only a couple exceptions, the overwhelming majority of surface parking lots in the B-4 District, including private, City, and WVU lots, do not appear to comply with the ten-foot buffer standard.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

There appears to be sufficient landscape and hardscape areas that will be developed to buffer parking areas from view of adjoining public rights-of-way advancing regulatory intent and improving development over existing conditions of the site and the B-4 District.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

There appears to be sufficient landscape and hardscape areas that will be developed to buffer parking areas from view of adjoining public rights-of-way advancing regulatory intent and improving development over existing conditions of the site and in the B-4 District. The nature of the variance cannot contribute to or mitigate traffic congestion.

Shamberger moved to approve V13-47 as requested with the condition recommended in the Staff Report; seconded by Papandreas. Motion carried unanimously.

Bossio reminded Ms. Hennsley that the Board's decision can be appealed to Circuit Court within thirty days after the Board's decision and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

Agenda Item Q

V13-53 Minimum Building Height

Bossio recognized Aaron Hennsley of Altoona, Pennsylvania who concurred with the Staff recommendations.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized James Giuliani of 256 Prairie Avenue who stated the B-4 District requires a two-story structure and noted there are two-story Sheetz that exists in other cities. The proposed structure is for a B-2 development and this building does not fit into the Comprehensive Plan. He expressed that Main Street Morgantown should be involved in this process and asked why they are not present or providing any input on the proposed structure.

Giuliani stated the City does not care about the historical preservation of the City but rather focuses on the economic development.

There being no further public comments, Bossio recognized Aaron Hennsley of Altoona, Pennsylvania to provide a rebuttal. Hennsley stated there are no two-story *Sheetz* developments within the company other than the corporate location where his office is located.

Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that Staff recommends, without condition, that variance relief be granted to permit the development of a one-story principal structure, rather than the minimum two-story building height standard, as illustrated on the elevation drawing dated 07OCT 2013.

Shamberger made a motion to find in the affirmative for all the Findings of Facts for V13-53 as revised in Staff report; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

“Gas Station Mini-Mart” development appears to be predominantly one-story and single use rather than multi-story and mixed-use. A more urban design has been proposed to emulate a two-story building.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

The principal structure of the existing “Gas Station Mini-Mart” use located in the B-4 District at 1345 University Avenue is one-story.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

A more urban design has been proposed to emulate a two-story building thereby advancing the regulatory intent of more intense development patterns in the B-4 District.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The proposed building will appear to be a two story facility from the exterior. The nature of the variance cannot contribute to or mitigate traffic congestion.

Cardoso moved to approve V13-53 as requested without conditions; seconded by Shamberger. Motion carried unanimously.

Bossio reminded Ms. Hennsley that the Board’s decision can be appealed to Circuit Court within thirty days after the decision and that any work related to the Board’s decision during this period would be at the sole financial risk of the petitioner.

- R. **V13-54 / James Watson / 324 Barrickman Street:** Request by James Watson for variance relief from Article 1331.08 as it relates to accessory structures at 324 Barrickman Street: Tax Map 37, Parcel 168; R-1A, Single Family Residential District.

Fletcher read the Staff Report stating the petitioner seeks to construct a 16' x 24' accessory detached garage structure between the principal structure and Dorsey Avenue. Addendum A of this report illustrates the location of the subject site.

Article 1329.02 provides the following definition to guide determining lot frontage:

LOT FRONT – The side of a lot that abuts a public street is the front of the lot. For corner lots, the shortest side fronting upon a street shall be considered the front of the lot. Where buildings exist on the lot, the frontage may be established by the orientation of the building, or of the principal entrance, if building orientation does not clearly indicate lot frontage. Where no other method determines conclusively the front of a lot, the Planning Director shall select one frontage on the basis of traffic flow on adjacent streets, so that the lot is considered to front on the street with the greatest traffic flow.

The subject property is located at the corner of Dorsey Avenue and Barrickman Street (see Addendum A). As the following photo illustrates, the “front” door of the principal single-family dwelling structure is located on what appears to be the side or rear of the structure. It is therefore the opinion of the Planning Division that the subject parcel’s lot front is the boundary running parallel with Dorsey Avenue.

Article 1331.08 “Accessory Structures and Uses in Residential District” provides the following related provisions:

- (A)(2) Accessory structures, if detached from a principal structure, shall not be placed in the front yard. If placed in a side yard, accessory structures shall not be located closer to the street than the required front setback of the principal structures.
- (A)(4) On corner lots, accessory structures shall not be located between any portion of the principal structure and either street.

Because the petitioner seeks to construct the detached accessory garage structure between the principal structure and Dorsey Avenue, variance relief is required from Article 1331.08(A)(2) and Article 1331.08(A)(4).

It should be noted that similar variance relief was granted under Case No. V12-21 on 25 JUL 2012 for a detached accessory storage shed structure at 310 Ford Street.

Bossio recognized James Watson of 324 Barrickman Street who noted that Barrickman is his Street and not Dorsey.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public portion closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner’s findings of fact (deleted matter struck through; new matter underlined).

Staff recommends approval of the variance petition V13-54 with the following conditions:

1. That the proposed accessory detached garage may be located no closer to Barrickman Street than the principal structure.
2. That the setback of the proposed accessory detached garage may be no closer than ten (10) feet from the property boundary running with the Barrickman Street right-of-way.
3. That no part of the proposed detached accessory structure may be designed, constructed, or used for sleeping purposes and no cooking fixtures may be placed or permitted therein.
4. That no part of the proposed detached accessory structure may be designed, constructed, or used for the conduct of commercial enterprises or a home occupation.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V13-54 as revised in the Staff Report; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The subject parcel extends from Dorsey Avenue along Barrickman Street approximately 170 feet to an unopened thirty-foot wide public right-of-way that is labeled “Hartley Street” on Tax Map 37. The existing principal single-family dwelling structure was constructed near the Waitman Street intersection with Barrickman Street. For reasons unknown, the orientation of the principal structure faces the unopened right-of-way at the rear of the property. Due to the location and orientation of the existing principal structure, constructing a detached accessory garage structure in the rear yard closest to the unopened right-of-way at the rear of the property does not appear feasible without improving the unopened portion of Barrickman Street and possibly the unopened “Hartley Street” right-of-way and potentially encroaching into rear setback requirements. Further, the subject property is surrounded on three sides by public rights-of-way and the width of the parcel ranges from approximately 50 feet to 52.68 feet. If the “Hartley Street” right-of-way were open and improved or opened and improved in the future, there does not appear to be a side or rear yard within which an accessory structure could be constructed given the exclusion of same provided by Article 1331.08(A)(4).

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

It appears that a strict interpretation and enforcement of Article 1331.08(A)(2) and Article 1331.08(A)(4) would prohibit construction of any detached accessory structure in the largest portion of the property. Additionally, similar variance relief was granted by the Board for Case No. V12-21 on 25 JUL 2013 for a detached accessory storage shed structure at 310 Ford Street.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Although not necessarily complicated by the requirements of Article 1331.08(A)(2) and Article

1331.08(A)(4), there appears to be a number of detached accessory garage structures within the immediate neighborhood that contribute to value and convenience for the owners/occupants of same. A strict interpretation and enforcement of Article 1331.08(A)(2) and Article 1331.08(A)(4) would otherwise deny the petitioner the ability to similarly contribute to the value and convenience of his property.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The principal use of property will remain a single-family dwelling permitted by-right in the R-1A District. The nature of the variance cannot contribute to or mitigate existing traffic congestion within the immediate area.

Shamberger moved to approve V13-54 as requested without conditions; seconded by Cardoso. Motion carried unanimously.

Bossio reminded Ms. Watson that the Board's decision can be appealed to Circuit Court within thirty days after the decision and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- S. V13-55 / Eve Faulkes / 49 Maple Avenue:** Request by Eve Faulkes for variance relief from Article 1331.08 as it relates to accessory structures at 49 Maple Avenue: Tax Map 36, Parcel 479; R-1A, Single Family Residential District.

Fletcher read the Staff Report stating the petitioner seeks to replace a canvas/metal temporary carport facility with an 11' x 27' detached accessory structure approximately two feet from the side property line. Addendum A of this report illustrates the location of the subject site.

Article 1331.08(3) provides that detached accessory structures shall not be located closer than five (5) feet to the side or rear property line.

According to the petitioner, there is approximately 16 feet between the principal structures at 49 Maple Avenue and 51 Maple Avenue. The site plan illustrates a 2'-6" setback for the principal structure at 51 Maple Avenue from the petitioner's 49 Maple Avenue shared side property boundary. The construction of an 11-foot wide accessory structure against the side of the principal structure at 49 Maple Avenue would result in a side setback of 2'-6" for the proposed detached accessory structure. As such, the proposed location of the petition's detached accessory structure requires a three-foot variance from the side property line.

Bossio recognized John Garlow of 49 Maple Drive who stated that the proposed carport would improve the neighborhood.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public portion closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the petitioner. Addendum B of this report provides Staff recommended revisions to the petitioner's findings of fact (deleted matter struck through; new

matter underlined). Staff recommends approval of Case No. V13-55 with the condition that the detached accessory structure may not extend closer to Maple Avenue than the front building line of the principal structure at 49 Maple Avenue, exclusive of the front porch.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V13-55 as revised in Staff report; seconded by Cardoso. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

There is an existing driveway that is used for parking. On that block of Maple Avenue there are only two permit parking spaces on the street – one of which is handicapped, and there are six houses on the street. Given the prevailing proximity of houses in the South Park neighborhood to property boundaries, additions to existing principal structures and the construction of new detached accessory structures, appears to be challenged by requisite setback standards.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There appears to be several carports and principal structures in the South Park neighborhood that do not comply with requisite setback standards. A carport covering should serve to help control rainwater run-off for the existing two-car driveway.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

There appears to be several carports in the South Park neighborhood that are close to property lines. According to the petitioner, the proposed carport will be an open-walled design with engineered hurricane tie downs for safety and strength.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

It will not change the present use and should increase market property values. The nature of the variance cannot contribute to or mitigate existing traffic congestion within the immediate area.

Papandreas moved to approve V13-55 with the condition recommended in the Staff Report; seconded by Shamberger. Motion carried unanimously.

Bossio reminded Ms. Garlow that the Board's decision can be appealed to Circuit Court within thirty days after the decision and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

- T. CU13-17 / Joe Panico / 507 Beechurst Avenue:** Request by Joe Panico, on behalf of 500 Block, LLC, for approvals of one (1) conditional use petition and five (5) variance petitions relating to a "Mixed-Use Dwelling" development at 507 Beechurst Avenue.

Fletcher read the combined Staff Report stating the petitioner seeks to construct two stories on top of an existing building that will include a total of ten (10) mixed-use efficiency dwelling units

with five (5) units of the new stories. Addendum A of this report illustrates the location of the subject development site.

The petitioner's proposed development program details include:

- The existing building includes two levels. The basement level is approximately 2,640 sq. ft. and is currently being used for storage by the occupant of the first story level. The first level is approximately 2,640 square feet and is currently occupied by an "Administrative Office" use. The non-residential use of the first level at grade with Beechurst Avenue will remain.
- According to Tax Map 19, Parcel 46 is approximately 37.5' x 100' resulting in an approximate area of 3,750 square feet.
- Being less in area than the minimum B-2 District lot size standard of 6,000 square feet, the existing parcel is considered a pre-existing, non-conforming parcel.
- The existing building does not meet front, side or rear setback standards or the maximum lot coverage standard. However, the BZA approved variance relief on 15 DEC 2010 allowing a 32' X 20' addition to be constructed onto the rear of the building. Variance relief granted addressed encroachments relating to rear setback, lot coverage, and increasing the extent of nonconforming side setbacks (Case No. V10-33).
- Two (2) on-site parking spaces are provided to the rear of the site with remaining spaces proposed for an existing off-site parking lot located on Parcel 47.02 of Tax Map 19, which, accordingly to Monongalia County Assessor's website, is owned by 500 Block, LLC.

Addendum B of this report provides a Planning and Zoning Conformity Report that identifies:

- Planning and Zoning Code provisions related to the subject development;
- Whether or not the subject development meets standards identified therein;
- Case numbers for conditional use and variance petitions requiring approval by the BZA; and,
- Staff observations and comments concerning development program revisions and requisite approvals.

The following list summarizes requisite conditional use and variance approvals:

CU13-17To develop a conditional "Off-Site Parking Facility" use for seven (7) parking spaces within the existing parking lot located on Parcel 47.02 of Tax Map 19.

V13-56To permit the development of window openings, fenestration ratios, and window recessing less than requisite performance standards as illustrated on the building elevations dated 23 MAY 2013 by granting a 31.4% variance for the total front façade fenestration ratio, a 18.9% variance for the ground floor front façade fenestration ratio, and relief from recessing windows.

V13-57To permit the development of cladding materials less than requisite performance standards and ratios as illustrated on the building elevations dated 23 MAY 2013 so that cementitious siding and masonry veneer may be used on the front façade and cementitious siding and concrete block may be used on the rear façade.

V13-58.....To permit the development of the proposed second and third story as illustrated on the site plan dated 23 MAY 2013 that encroaches into the minimum front 15-foot build-to line setback standard within the Beechurst Corridor Overlay District by granting a 14-foot variance. It should be noted that one of the principle legislative intents of the minimum fifteen-foot setback standard is to reduce the impact to the built environment and public investment should Beechurst Avenue be widened by the State in the future.

V13-59.....To permit the development of the proposed second and third story and stair/walkway facility as illustrated on the site plan dated 23 MAY 2013 by granting a 5-foot setback variance on the east side, a 3.75-foot setback variance on the west side, and a 30-foot rear setback variance.

V13-60.....To exceed the maximum lot coverage standard of 60% as illustrated on the site plan dated 23 MAY 2013 by granting a 20.3% variance.

Staff recommends that the Board, without objection from members of the Board, the petitioner, or the public, combine the public hearings for one (1) conditional use petition and five (5) variance petitions presented herein. However, each respective petition must be considered and acted upon by the Board separately.

Bossio asked if anyone present objected to combining the public hearings for Agenda Items T through Y. There being no objections, Bossio stated that one public hearing would be conducted at the appropriate time.

Bossio recognized Joe Panico of 507 Beechurst Avenue who explained the proposed structure would be a two story addition on an existing foundation. A walk way and fire exit will be constructed to the side that will be covered and include common steps. Because the walkway is being covered, it will encroach onto the rear yard setback. This is on an interior lot and with the exception of a 15 foot City alley, it is essentially one lot. Panico stated that his structure does meet the rear yard setback with the 15 foot alley and then an additional 42 feet to the property line. He felt the property should be one parcel, as it's owned by one owner and if the parking area could be combined with the property then variances would not be necessary. He noted that the variances requested are ones that have been approved by the Board in the past on different properties.

There being no comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request.

Bossio recognized William Brewer of Brewer & Griggenbach who stated he represented Morgantown Energy Associates (MEA) who is not opposed to the proposed structure but wanted to express some concerns. He inquired about the setback and how close it will come to the alley as MEA acquired a right-of-way close to said alley that was granted by the City in 1989. Under the alley are high pressured steam lines that come out of the power plant that supply steam to both campuses of WVU and West Virginia University Hospital. There are concerns of bringing the existing structure to the edge of that alley there is risk for significant hazard and danger if a line would ever rupture. Brewer noted that MEA was not provided with information on parking, a grading plan or the type of equipment that would be brought onto the property to accommodate the construction. There is a risk that if the lines were ruptured during construction the University Avenue or West Virginia University Hospital could be shut down. In

order to protect the safety and integrity of the system, Brewer requested a grading plan 30 days prior to commencement of excavation and 72 hours of notice prior to commencement so engineers could be present onsite to monitor work performed. In addition, manholes must be maintained at their property elevations and not disturbed.

There being no further public comments, Bossio invited Panico to podium for five-minute rebuttal.

Panico stated he is not doing any excavation or grading and has an existing parking lot that will be utilized. There will be no changes to topography and is aware of the easement if he were to dig post holes on his property. He expressed that a 3rd party should not be allowed to require conditions on the variance petition as he can deal with MEA directly and not involve the BZA.

Bossio noted the construction would be on top of an existing building and would not touch the topography. Brewer understood and stated that MEA wanted to express concerns if construction would take place closer to the alley. The current parking area is situated on top of existing steam lines and if there is any movement or damage to the lines, then a serious and hazardous issue could occur.

Bossio asked if MEA could mark the pavement location of the steam-lines. Brewer confirmed and said they could provide drawings and a map of where the steam-lines are located and one can see where the lines are running by following the manholes.

Fletcher suggested adding Brewers requests as conditions on the proposed variance petition.

Panico disagreed and did not feel the Board needs to be involved by providing conditions from a 3rd party request.

There being no further comments or questions by the Board, Bossio declared the public portion closed and asked for Staff recommendations.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed requests meet the standard criteria for a conditional use and variance by reaching a positive determination for *each* of the respective "Findings of Fact" submitted by the applicant.

With the exception of the conditional use application, the petitioner submitted identical findings of fact for each of the variance applications regardless of whether or not the responses relate to the individual variance petitions. Should the Board elect to consider the variance petitions rather than tabling the related agenda items and directing the petitioner to complete the findings of fact as expected, Staff submits recommended findings of fact in Addendum C of this report.

Again, each respective conditional use and variance petition must be considered and acted upon by the Board separately.

Agenda Item T

CU13-17 Conditional Off-Site Parking Facility" use.

Fletcher stated that Staff recommends conditional use approval be granted for the proposed "Off-Site Parking Facility" on Parcel 47.02 of Tax Map 19 with the following conditions:

Condition 1 – That the off-site parking facilities shall be encumbered by an easement or similar agreement duly executed and acknowledged, which specifies that the land upon which the off-site parking facility is located is encumbered by the parking use. Said instrument shall specify and bind the time period to the anticipated life of the building or use to which the parking facilities are accessory. Said instrument shall be filed with the Planning Division and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, West Virginia.

Condition 2 – That the petitioner shall maintain current and valid parking of no less than two (2) on-site spaces and no less than seven (7) off-site spaces on Parcel 47.02 of Tax Map 19. Each off-site parking space shall have a sign noting the residential unit for which the space is reserved. Signs shall be 12 inches wide by 18 inches tall and shall be mounted between three feet and five feet above the finished surface of the parking stall. The text on the sign shall state, "This space is reserved for the resident(s) of [address to be determined later by City Engineer] only per City Code 1365.07(D)."

Condition 3 – With the exception of related landscaping and screening requirements, all requisite on-site and off-site parking spaces shall be designed, improved, paved, and striped in accordance with Article 1365.09 "Parking Development Standards" and lighting facilities developed in accordance with Article 1371.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for CU13-17 as revised in the Staff Report; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – Congestion in the streets is not increased, in that:

Alternate modes of transportation are readily available within the Beechurst Avenue corridor where increased mixed-use residential density is a desired development pattern in the Sunnyside-Up Neighborhood Revitalization Plan and the City's Comprehensive Plan.

Finding of Fact No. 2 – Safety from fire, panic, and other danger is not jeopardized, in that:

The proposed off-site parking facility is an existing surface parking lot.

Finding of Fact No. 3 – Provision of adequate light and air is not disturbed, in that:

The proposed off-site parking facility is an existing surface parking lot. The proposed addition to the existing non-residential building for which off-site parking approval is requested, is two stories and should not adversely impact existing light distribution or air flow patterns.

Finding of Fact No. 4 – Overcrowding of land does not result, in that:

The Planning and Zoning Code provides the opportunity of dedicating off-site parking to mitigate overcrowding development patterns. No new parking structure, facility, or use is proposed as the location of the off-site parking facility is an existing surface parking lot.

Finding of Fact No. 5 – Undue congestion of population is not created, in that:

The Planning and Zoning Code provides the opportunity of dedicating off-site parking to mitigate population congestion. No new parking structure, facility, or use is proposed as the location of the off-site parking facility is an existing surface parking lot. Additionally, increased mixed-use residential density along the Beechurst Avenue corridor is a desired development pattern in the Sunnyside Up Neighborhood Revitalization Plan and the City's Comprehensive Plan.

Finding of Fact No. 6 – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

The proposed addition to the existing non-residential building, for which off-site parking approval is requested, should not increase demand for said public infrastructure or services.

Finding of Fact No. 7 – Value of buildings will be conserved, in that:

The proposed off-site parking facility appears, in this case, necessary to continue private sector efforts of increasing mixed-use residential density in the Sunnyside Neighborhood. New construction should further existing mark value and interest in continued development and redevelopment.

Finding of Fact No. 8 – The most appropriate use of land is encouraged, in that:

The location of the proposed off-site parking facility utilized an existing surface parking lot.

Papandreas moved to approve CU13-17 with conditions recommended in the Staff Report; seconded by Shamberger. Motion carried unanimously.

Agenda Item U

V13-56 Minimum fenestration standards

Staff offers no recommendation as to whether or not variance relief should be granted to permit the development of window openings, fenestration ratios, and window recessing less than requisite performance standards as requested. However, should variance relief be granted as requested, Staff recommends that a condition be included that the entire storefront-type window spaces (2) framed by the existing brick façade on the ground floor facing Beechurst Avenue illustrated in the following image be comprised of window glazing [see Staff report for illustration].

Shamberger made a motion to find in the affirmative for all the Findings of Facts for V13-56 as recommended in the Staff Report; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

There are existing commercial storefront ground floor window openings in the existing structure that will be replaced with 100% glazing but will still be less than minimum ground floor fenestration ratio standards. The proposed residential floor plans of the second and third stories appear to limit the amount of windows that can be developed on the front and rear facades.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Variance relief has been granted by the Board of Zoning Appeals for fenestration ratio and window recessing standards within the Sunnyside Overlay Districts.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The nature of variance relief requested should affect public welfare or harm public improvement or private property within the immediate area.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The proposed fenestration ratio and requested relief from recessing windows appears to be relatively consistent with existing development patterns along the Beechurst Avenue corridor. The nature of the variance relief requested cannot contribute to or mitigate existing traffic congestion.

Cardoso moved to approve V13-56 with conditions recommended in the Staff Report; seconded by Shamberger. Motion carried unanimously.

Agenda Item V

V13-57

Minimum cladding materials standards

Staff offers no recommendation as to whether or not variance relief should be granted to permit the development of cladding materials less than requisite performance standards as requested. However, should variance relief be granted as requested, Staff recommends at least the following conditions:

Condition 1 – That vinyl siding may not be used for any portion of the exterior façades.

Condition 2 – That exterior stairs, steps, landings, walkways, railings, and support members may not be comprised of exposed wood or treated lumber.

Condition 3 – That cementitious siding must be comprised of simulated wood grain profile.

Condition 4 – That the second and third story exterior walkways facing Beechurst Avenue and no less than twelve (12) feet thence toward the rear must be enclosed with the same cladding or combination of cladding materials for which relief is granted herein.

Condition 5 – That the two-color cementitious siding design on the west building façade be delivered as illustrated on the building elevations dated 23 MAY 2013.

Condition 6 – That a garbage dumpster coral must be constructed of masonry materials and include an opaque gate.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V13-57 as recommended in the Staff Report; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

It appears that the predominant architectural designs of existing smaller buildings along Beechurst Avenue incorporate siding materials. The use of cementitious siding, rather than vinyl or wood siding, and stone veneer is intended to utilize more durable cladding and cost effective cladding materials.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

Variance relief has been granted by the Board of Zoning Appeals within the Sunnyside Overlay Districts to permit the use of cementitious siding and brick and stone veneers.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not

harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Incorporating hardiplank, brick, and other materials in the proposed project will not be harmful to the public welfare or other improvements in the vicinity. The more durable products will last longer and need less maintenance than natural materials. The proposed building will improve the vicinity and hopefully spark future redevelopment in a somewhat blighted area on a primary street.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

The proposed building materials appear to be generally within the fitting character of the Beechurst Avenue corridor. Market values of adjacent properties should increase with the proposed development and perhaps spark additional development in the area. The nature of the variance relief requested cannot contribute to or mitigate existing traffic congestion.

Papandreas moved to approve V13-57 with conditions recommended in the Staff Report; seconded by Shamberger. Motion carried unanimously.

Agenda Item W

V13-58 Minimum front setback standards

Fletcher stated that Staff offers no recommendation or conditions as to whether or not variance relief should be granted to permit the development of a second and third story that encroaches into the minimum front 15-foot build-to line setback standard within the Beechurst Corridor Overlay District by granting a 14-foot variance.

Shamberger made a motion to find in the affirmative for all the Findings of Facts for V13-58 as recommended in Staff Report; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The development of a second and third story utilizes the footprint of the existing structure that does not meet present minimum front setback requirements.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

With the exception of one or two buildings on the west side of the 500 Block of Beechurst Avenue, all of the existing buildings do not meet present minimum front setback requirements.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

Unlike a larger scaled development that results in razing and removing more than one nonconforming building along Beechurst Avenue, the proposed second and third stories should not adversely impact any right-of-way widening improvements that the State may undertake in the future.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic

congestion on public streets, because:

The proposed second and third stories utilize the footprint of the existing building and maintain a setback trend that is consistent with the majority of buildings on the west side of the 500 Block of Beechurst Avenue. Increased mixed-use residential density along the Beechurst Avenue corridor is a desired development pattern in the Sunnyside Up Neighborhood Revitalization Plan and the City's Comprehensive Plan. The nature of the variance relief requested cannot contribute to or mitigate existing traffic congestion.

Shamberger moved to approve V13-58 without conditions; seconded by Papandreas. Motion carried unanimously.

Agenda Item X

V13-59

Minimum side and rear setback standards

Staff recommends, without condition, that variance relief be granted to permit the development of the proposed second and third story and stair/walkway facility as illustrated on the site plan dated 23 May 2013 by granting a 5-foot setback variance on the east side, a 3.75-foot setback variance on the west side, and a 30-foot rear setback variance.

Papandreas made a motion to find in the affirmative for all the Findings of Facts for V13-59 as recommended in the Staff Report; seconded by Shamberger. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

The proposed second and third stories utilize the footprint of an existing building that encroaches into minimum side setback requirements. The proposed residential floor plans of the second and third stories appear to limit the design and location of stairs and walkways given the narrowness of the existing footprint and property.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There appears to be a number of buildings within the 500 Block of Beechurst Avenue that encroach into minimum side setback standards including zero-lot line buildings.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The petitioner is the owner of the properties on both sides of the subject site which the proposed encroachment would most affect. The side setback encroachment does not appear to adversely impact public improvements within the immediate area.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

There appears to be a number of buildings within the 500 Block of Beechurst Avenue that encroach into minimum side setback standards including zero-lot line buildings. The redevelopment should enhance the value of the area and accordingly contribute to the market value of neighboring structures. The nature of the variance relief requested cannot contribute to or mitigate existing traffic congestion.

Cardoso stated that she felt there is a larger public safety concern and agrees with Mr. Brewer's requested conditions. Bossio agreed and suggested that MEA also provide Panico with illustrations documenting the location of the pipes. Board members agreed.

Papandreas moved to approve V13-59 with the condition that, if a permit for grading related work is required for the proposed development and with the understanding that Morgantown Energy Associates provides as-built plans of the adjoining steamlines to the petitioner, grading plans for the subject development must be provided by the petitioner to Morgantown Energy Associates no less than 30 days prior to the commencement of grading related work and the petitioner notify Morgantown Energy Associates that grading related work will commence no less than 72 hours prior thereto. Motion seconded by Shamberger. Motion carried unanimously.

Agenda Item Y

V13-60 Maximum lot coverage standard

Fletcher stated that Staff recommends, without condition, that variance relief be granted to exceed the maximum lot coverage standard of 60% by granting a 20.3% variance.

Shamberger made a motion to find in the affirmative for all the Findings of Facts for V13-60 as recommended in the Staff Report; seconded by Papandreas. Motion carried unanimously.

NOTE: The following Findings of Fact were included in the motion.

Finding of Fact No. 1 – There are exceptional or extraordinary circumstances or conditions applicable to this property or to the intended use, that generally do not apply to other properties or uses in the same vicinity, because:

Variance relief to exceed the maximum lot coverage has already been granted by the Board of Zoning Appeals for the existing building footprint under Case No. V10-33. The proposed second and third stories utilize the footprint of the existing building. The present increase in lot coverage appears necessary to construct staircase and walkway facilities that will serve the proposed second and third stories.

Finding of Fact No. 2 – The variance is necessary for the preservation and enjoyment of a substantial property right that is possessed by other properties in the same vicinity and zoning district, but which denied to this property, because:

There appears to be several existing buildings within the Beechurst Avenue corridor that exceed the present maximum lot coverage standard including the Beechview Place Apartments development that was approved as a planned unit development.

Finding of Fact No. 3 – The granting of this variance will not be harmful to the public welfare and will not harm property or improvements in the vicinity and zoning district in which the subject property is located, because:

The proposed lot coverage does not appear to result in adverse impacts to private properties or public improvements within the immediate area.

Finding of Fact No. 4 – The granting of this variance will not alter the land-use characteristics of the vicinity and zoning district, or diminish the market value of adjacent properties, or increase traffic congestion on public streets, because:

There appears to be several existing buildings within the Beechurst Avenue corridor that exceed the present maximum lot coverage standard including the Beechview Place Apartments development that was approved as a planned unit development. The redevelopment should enhance the value of the

area and accordingly contribute to the market value of neighboring structures. The nature of the variance relief requested cannot contribute to or mitigate existing traffic congestion.

Shamberger moved to approve V13-60 without conditions; seconded by Papandreas. Motion carried unanimously.

Bossio reminded Mr. Panico that the Board's decisions can be appealed to Circuit Court within thirty days after the decisions and that any work related to the Board's decisions during this period would be at the sole financial risk of the petitioner.

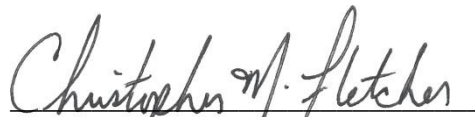
V. ANNOUNCEMENTS: None.

VI. ADJOURNMENT: 12:02 AM

MINUTES APPROVED:

December 18, 2013

BOARD SECRETARY:


Christopher M. Fletcher, AICP